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No. 84

In the Supreme Court of the United States

OCTOBER TERM, 1947

THE UNITED STATES OF AMERICA, APPELLANT

L. O. GRIFFITH, H. J. GRIFFITH, CONSOLIDATED
THEATRES, INC., ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 64

THE UNITED STATES OF AMERICA, APPELLANT

v.

L. C. GRIFFITH, H. J. GRIFFITH, CONSOLIDATED
THEATRES, INC., ET AL.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE WESTERN DISTRICT OF OKLAHOMA

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court (R. 51-82) is reported in 68 F. Supp. 180.

JURISDICTION

The decree of the District Court was entered on October 24, 1946 (R. 129). A petition for appeal was filed on December 19, 1946, and was allowed on December 23, 1946 (R. 129-130, 133). The jurisdiction of this Court is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat. 823, 36 Stat. 1167, 15

U. S. C. 29), and Section 238 of the Judicial Code, as amended (36 Stat. 1157, 38 Stat. 804, 43 Stat. 938, 28 U. S. C. 345). Probable jurisdiction was noted on May 12, 1947.

QUESTION PRESENTED

The appellee motion picture exhibitors, by pooling their film-buying power, jointly negotiated film licensing agreements with the major film distributors. These agreements by their terms and in actual effect prevented other exhibitors from competing with the appellees in procuring feature films for either first or subsequent run exhibition. Simultaneously, the appellees eliminated competition by such means as acquiring the theatres of competing exhibitors under agreements binding them not to compete in the future. The question is whether such concerted action constituted a combination unreasonably to restrain trade and to monopolize or attempt to monopolize motion picture exhibition in the towns in which the appellees operated theatres.

STATUTE INVOLVED

The Act of July 2, 1890, 26 Stat. 209 (15 U. S. C. 1, *et seq.*), known as the Sherman Act, provides in part as follows:

SEC. 1 [as amended by the Act of August 17, 1937, 50 Stat. 693]. Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or

with foreign nations, is hereby declared to be illegal: * * *

SEC. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor * * *.

SEC. 4 [as amended by the Act of March 3, 1911, Sec. 291, 36 Stat. 1167]. The several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. * * *

STATEMENT

I

SUMMARY OF FACTS AND ISSUES

This suit was filed on April 28, 1939, and charged the defendants with violating Sections 1 and 2 of the Sherman Act by monopolizing and unreasonably restraining competition in the exhibition of films in towns in Oklahoma, Texas, and New Mexico during the five years preceding the filing of the complaint (R. 1-10). The exhibitor-defendants were four affiliated corporations engaged in operating motion picture

theatres and three individuals who were their principal officers and owners, one of whom died during the pendency of the litigation. They were charged with combining their theatres in licensing films from the major distributors in order to restrict unreasonably the film licensing opportunities of independent exhibitors and to obtain monopolies in the communities where the defendants and others affiliated with them operated theatres. The complaint prayed that this combination of exhibitors be declared illegal, that it be dissolved, and that the defendants be enjoined from continuing their illegal monopolies and from continuing to combine their theatres for the purpose of compelling major distributors to discriminate against their competitors in granting film licenses.

The eight major film distributors were also named as defendants and were charged with conspiring with the exhibitor defendants and with each other to produce the competitive effects noted above. On November 27, 1940, as a result of the consent decree entered in *United States v. Paramount Pictures, Inc.*,¹ the charge that the film distributors had conspired with each other to produce these effects was eliminated but the charge that each of them had conspired with the exhibitor defendants to this end was retained

¹ See Nos. 79-84, this Term, which are here on appeal from the final decree entered in this case following expiration of the consent decree.

(R. 50). Pursuant to the same agreement, the five theatre-owning majors, Fox, Loew, Paramount, RKO, and Warner, were also dismissed as defendants by stipulation (R. 49). The plaintiff later concluded that relief against the remaining distributor defendants (Columbia, United Artists, and Universal) might more appropriately be obtained in the *Paramount* case and these distributors were therefore also dismissed as defendants in the instant case (R. 50).

The issues raised by the complaint and by the evidence are substantially those decided adversely to the defendants in *United States v. Crescent Amusement Co.*, 323 U. S. 173, and *United States v. Schine Chain Theatres, Inc.*, 63 F. Supp. 229 (W. D. N. Y.).² In all three cases, the charge against the defendants involved the illegal use of film buying power resulting from combining a large group of theatres into a so-called circuit for film buying purposes, in order to secure to theatres of the circuit unreasonable competitive advantage over other theatres. In all three the Government's proof consisted principally of licensing agreements made between the defendants and the major film distributors which prevented the defendants' competitors from playing, upon subsequent runs, the films exhibited by the defendants and from competing with the defendants for the privilege of licensing prior runs of films which the de-

² Appeal to this Court is now pending, No. 10, this Term.

fendants chose to exhibit; the collective negotiation of such agreements by the defendants on behalf of themselves and others affiliated with them; and the unreasonable effect of those agreements, in numerous instances, upon specific exhibitors attempting to compete with the defendants' theatre circuit.

The undisputed facts of this case may be summarized as follows: The appellees, Griffith Amusement Company, Consolidated Theatres, Inc., R. E. Griffith Theatres, Inc., and Westex Theatres, Inc., owned and operated chains of motion picture theatres in various cities and towns in Oklahoma, Texas, and New Mexico. In many communities, theatres operated by the appellees had no competition, while in others appellees were competing with independent theatre operators. During the years 1934-1939, both inclusive, the appellee corporations pooled their film buying power by jointly contracting with major film distributors for the feature films to be exhibited in appellees' theatres and other theatres affiliated with them. The affiliated theatres were parties to "administration" agreements by which appellees undertook to procure films for them in return for a percentage of their gross revenue. The master licensing agreements with the distributors provided for the payment of a blanket rental for the entire circuit and the administration agreements gave the

appellees the right to allocate this rental among their theatres and those of their affiliates as they saw fit. Such pooling of film requirements, for both the competitive and non-competitive theatres operated by the appellees and for the "administered" theatres, provided the inducement for the major film distributors to enter into master licensing agreements which, by their terms, prevented independent exhibitors from competing with appellees in procuring feature films for exhibition, whether for first or subsequent runs. These master agreements differed from the standard form of licensing agreements by which films were licensed to independent exhibitors in respects which, on their face, were intended to enable appellees to eliminate or restrain trade and to monopolize the exhibition of motion picture films in the towns in which appellees operated theatres. It is the Government's contention that each such master agreement between the appellees and a major film distributor constitutes a violation of Section 1 of the Sherman Act.

By reason of the master agreements obtained by the appellees, numerous independent exhibitors operating theatres in towns covered by such agreements found it impossible to obtain a sufficient number of major films upon early runs to compete effectively with the circuit theatres. As a result, appellees were enabled to buy out many such competitors' theatres under agreements

which bound the former operators and owners not to compete further in such towns, or to acquire a financial interest in their theatres and take over their film buying. As the total number of towns in which the appellees operated, the number of towns in which they operated without competition and the number of theatres for which they bought films thus increased, their film-buying power was correspondingly enhanced at the expense of their remaining independent competitors.

However, the trial court's findings of fact were in form adverse to the Government. It concluded, for example, that the appellees had employed a joint agent in licensing films for purposes of economy and efficiency only, that they did not condition the licensing of films in non-competitive situations upon the licensing of films in competitive situations, that the appellees did not conspire or combine with each other or with the distributors "for the purpose or with the effect to unreasonably restrain or restrict the terms upon which feature pictures were to be, or were, distributed by such distributors, or made available for exhibition in theatres competing with the defendants" (F. 10, 12, 20; R. 87, 123, 125). Similarly, the lower court found "The evidence does not establish the existence of any agreement, express or implied, between the defendants, or any of them, and any distributor which unreasonably restrains interstate commerce in moving

picture films, and the licensing agreements between the defendants and the several distributors contain no agreement, privilege or concession which unreasonably restrains interstate commerce in moving picture films in the territory covered by the complaint." (F. 21, R. 125). The Government contends that these conclusions as to the ultimate issues cannot stand against the substantially undisputed evidence. Specifically it contends that the composition and growth of the appellees' circuit, the operating methods of the major film distributors, the existence and nature of the master agreements which the circuit made with major film distributors, and the effect of such agreements and franchises upon competition were established by documentary evidence and by uncontroverted oral testimony.

Thus, our assignment of errors has been limited to those findings in which the trial court, by ignoring material facts established by undisputed evidence, has arrived at adverse conclusions on the ultimate issues. Insofar as the findings state facts of an evidentiary character, they have generally been accepted as correct for the purposes of this appeal. Therefore, in the following statement, we have set forth evidentiary facts as found by the trial court together with relevant and largely undisputed facts in the record which were not reflected in the findings.

II

THE UNDISPUTED FACTS

A. THE GRIFFITH CIRCUIT

There are four corporate appellees, all engaged in the ownership and operation of motion picture theatres, Griffith Amusement Co., Consolidated Theatres, Inc., R. E. Griffith Theatres, Inc., and Westex Theatres, Inc. The surviving individual appellees are H. J. Griffith and L. C. Griffith, whose brother R. E. Griffith, died in November, 1943 (R. 51, 1575). The organization and growth of the four appellee corporations were summarized as follows in the trial court's Findings 1 to 5, except where otherwise indicated.

As of 1926, the brothers L. C. Griffith, R. E. Griffith and H. J. Griffith were operating as partners 15 theatres in 8 towns in Oklahoma and Texas. The Griffith brothers owned a 100% interest in 7 of these theatres and a 50% interest in the remaining 8. In that year, they organized the Griffith Amusement Company, a corporation, and transferred to it their theatre holdings. All of the Company's Class A stock was issued to the three Griffith brothers, while the Class B was issued to Universal Chain Theatrical Enterprises which agreed to lend to the Company funds for the purchase and equipping of additional theatres, the trial court finding that "the acquisition of such theatres was to be dictated by Griffith Amusement Company." Upon organization of

the Griffith Amusement Company, L. C. Griffith became president and chief managing officer and continued as such during the period involved in this case, R. E. Griffith took charge of procuring films from the film distributors and H. J. Griffith became responsible for the mechanical problems of the theatres. On April 28, 1939, the date of the commencement of this action, Griffith Amusement Company owned a 100 per cent interest in 23 theatres in 10 towns and owned a financial interest with various other parties in 35 theatres in 12 towns. (F. 1, R. 83-84.)

Consolidated Theatres, Inc., was organized in 1929 by the three Griffith brothers for the purpose of acquiring additional theatres, because "the Griffith brothers desired to continue to acquire additional theatres, but some of the stockholders of Griffith Amusement Company were unwilling to make further acquisitions." The court also found that at all times since the organization of Consolidated Theatres, Inc., L. C. Griffith owned a majority of its outstanding stock, was its active managing officer, and, since 1934, its president. Most of the remaining stock was issued to R. E. Griffith and H. J. Griffith, with the former disposing of his stock in 1931. Thereafter, R. E. Griffith's connection with Consolidated was limited to buying its films, until the 1938-39 season, in the manner to be discussed hereafter. H. J. Griffith continued as stockholder, officer and director of Consolidated from 1929 until after

the filing of this suit. The theatres acquired and operated by Consolidated were located in different towns from those in which the Griffith Amusement Company operated theatres, except in Oklahoma City where each operated theatres. The trial court also found that on April 28, 1939, when this action was begun, Consolidated Theatres, Inc., owned a 100 percent interest in 14 theatres in 6 towns and a financial interest with various parties in 54 theatres in 25 towns, which included 3 theatres in Lubbock, Texas, owned by Lindsey Theatres, Inc., 50 percent of whose stock is owned by Consolidated. Also included in the number are 8 theatres in Cuero, New Braunfels, Refugio and Uvalde, Texas, owned by Jack Pickens Theatres, Inc., in which organization Consolidated owns 50 percent of the stock, but for which it neither operates theatres nor licenses pictures. And included in the number are 9 theatres in Alvin, Bay City, El Campo, Texas City, Victoria and Wharton, Texas, in which Consolidated Theaters, Inc., owns a 25 percent interest,³ but does not license pictures for them⁴ (F. 2, R. 84; R. 419).

In 1931, R. E. Griffith exchanged his Consolidated stock for three of that corporation's

³ Another 25 percent interest was owned by the appellee Westex Theatres, Inc. (F. 4, R. 85).

⁴ They were included in master agreements negotiated by R. E. Griffith for Westex Theatres, Inc., and R. E. Griffith Theatres, Inc. (R. 2280-1, 2451, 2493).

theatres in New Mexico, and moved his residence there.^{*} Shortly afterward, he acquired three more theatres in different New Mexico towns and, in December, 1931, he organized R. E. Griffith Theatres, Inc., and transferred the six theatres to it. Until his death in 1943, R. E. Griffith owned the controlling stock interest in this corporation and was its active managing officer. The trial court found that L. C. Griffith had no interest in R. E. Griffith Theatres, Inc., at any time nor did he act as an officer or director, and that H. J. Griffith owned a small stock interest, but was not a director, officer, or employee. It further found that "on April 28, 1939, at the time this suit was filed, R. E. Griffith Theatres, Inc., owned a 100 per cent. interest in 11 theatres in 6 towns and a financial interest with various other individuals and corporations^{*} in 12 theatres in 7 towns" (F. 3, R. 85).

Westex Theatres, Inc. was organized on March 27, 1936, as a subsidiary of R. E. Griffith Theatres, Inc., which has at all times owned a majority of its stock. R. E. Griffith was in active management of Westex and no other corporate defendant aside from R. E. Griffith Theatres "had anything to do with the acquisition of theatre

^{*} At the same time, R. E. Griffith resigned as an officer of Griffith Amusement Company, but he remained a director and owner of 44% of that Company's Class A stock during all of the period involved in this case (R. 412-413).

^{*} Including the defendant Consolidated Theatres, Inc.

interests or properties by Westex Theatres.”¹ “On April 29, 1939, Westex Theatres, Inc., owned a 100 per cent. interest in 4 theatres in 2 towns and a financial interest in 40 theatres in 23 towns. Included in the list of partly owned interests is a 25 per cent. interest in 9 theatres in the towns of Alvin, Bay City, Texas City, El Campo, Victoria and Wharton, Texas, in which Consolidated Theatres, Inc., owns a 25 per cent. interest.” (F. 4, R. 85.)

The trial court found that since its organization, Griffith Amusement Company has maintained its headquarters and offices in Oklahoma City, Oklahoma, and that since the organization of Consolidated Theatres, Inc., the latter organization has maintained its headquarters and offices in the same office with the Griffith Amusement Company, “which have been common headquarters for both corporations, using a common office force, a common agent for licensing and booking moving picture films, and a common administrative service.” The trial court concluded that “the two corporations have at all times been separate entities. The management, control and ownership of theatres and income therefrom have been en-

¹ This finding necessarily refers only to negotiations for such acquisitions, since the evidence is undisputed that throughout the period of its expansion the theatres of Westex were combined with the theatres of the other corporate defendants as well as R. E. Griffith Theatres, Inc. in negotiating film licenses, until the 1938-39 season.

tirely separate and distinct, and neither corporation has in any manner been connected with R. E. Griffith Theatres, Inc., or Westex Theatres, Inc., except as above stated.* The maintenance of a common office and administrative service of the two corporations, Griffith Amusement Company and Consolidated Theatres, Inc., was for convenience, efficiency and economy of administration alone and for no other purpose." The trial court further found that "At no time since their organization have Griffith Amusement Company, Consolidated Theatres, Inc., R. E. Griffith Theatres, Inc., and Westex Theatres, Inc., constituted a single entity in any manner, but have been four distinct entities." (F. 5, 6, R. 85-86.)*

* The Government assigned error to the "finding that the defendants Griffith Amusement Company and Consolidated Theatres, Inc. combined their film licensing activities "for convenience, efficiency and economy of administration alone and for no other purpose'," and to the "finding that the defendants had no interest in each other's theatre acquisitions except as stockholders." (R. 130). The assignment was thus limited merely because the only relationship between the appellees which is relied upon in this case is the pooling of their film buying power. However, since the effectiveness of such film buying power was measured by the total number of theatres included in the combination, we do not concede that any appellee corporation had no interest in the number of theatres managed or controlled by the other appellees.

* The undisputed record ~~x~~ facts with respect to the relationship between the four corporate appellees are as follows: The period covered by the complaint was the five years April 28, 1934 to April 28, 1939. During these five years,

B. THE MAJOR FILM DISTRIBUTORS

The eight major film distributors, Fox, Loew,¹⁰ Paramount, RKO, Warner,¹¹ Columbia, Universal, and United Artists, between them distribute substantially all first-class feature films.¹² Accordingly, exhibitors in the area in which the appellees

all three Griffith brothers continued as directors and principal Class A stockholders of Griffith Amusement Company (R. 412-413). In 1938-39, R. E. Griffith Theatres, Inc. acquired 211 Class B shares of Griffith Amusement Company (R. 414). L. C. and H. J. Griffith continued as controlling stockholders and members of Consolidated Theatres, Inc. (R. 419). Although in 1931, R. E. Griffith exchanged for theatres his stock in Consolidated, in 1936 R. E. Griffith Theatres, Inc., acquired by original issue 250 shares of Consolidated common stock (R. 420). Similarly, H. J. Griffith and Consolidated Theatres, Inc., held minority stock interests (totaling 375 shares) in R. E. Griffith Theatres, Inc. (R. 424). A different but intimate relationship existed between Consolidated (controlled by L. C. and H. J. Griffith) and Westex (controlled by R. E. Griffith) in that each had a 25 per cent interest in each of 9 theatres in Texas towns (F. 2-4, R. 84-85). Finally during each of the years 1935-1939, both inclusive, R. E. Griffith Theatres, Inc., incurred an indebtedness in the nature of a running account to Griffith Amusement Company for supplies, maintenance and services (R. 415). These varied and intimate relationships between the appellees certainly suggest that the concerted action later discussed had its roots in a long-standing community of interests among the appellees, rather than in a coincidental meeting of strangers.

¹⁰ The terms "Metro" or "M-G-M" are also used to refer to films distributed by Loew (R. 1559).

¹¹ Vitagraph, Inc. was a wholly-owned distributor subsidiary of Warner (R. 1488).

¹² A feature film is any motion picture, regardless of topic, the length of which exceeds 4,000 feet in length.

operate found that they must rely upon the eight major distributors for a supply of such films, since those available from other distributors were generally not a satisfactory substitute (R. 469, 942, 1774-6). In fact, this situation prevailed throughout the United States during the years in question, as evidenced by *United States v. Crescent Amusement Co.*, 323 U. S. 173; *United States v. Schine Chain Theatres, Inc.*, 63 F. Supp. 229 (W. D. N. Y.); and *United States v. Paramount Pictures, Inc.*, 66 F. Supp. 323 (S. D. N. Y.), the latter two cases now pending on appeal to this Court.

Each of the eight major film distributors, except United Artists, distributed from 40 to 60 feature films a year. United Artists distributed a smaller number. Motion picture films are copyrighted, and are exhibited pursuant to licensing agreements between the distributors and the exhibitors. Prior to the 1941-1942 season,¹³ all of the feature films which each distributor expected to release during a single season were usually offered for license before they were made, and were licensed to exhibitors under contracts covering the distributor's entire output for the season.¹⁴

¹³ The season was a one-year period generally commencing about September 1 of each year.

¹⁴ The consent decree entered in *United States v. Paramount Pictures, Inc.* required that all features released by the consenting defendants (Fox, Loew, Paramount, RKO, and Warner) be completed and trade shown before being

The eight major distributors' methods of distributing and licensing films are similar. All have their principal sales offices in New York City and maintain branch offices in substantially the same locations. The physical distribution of the films is accomplished by sending prints to branches known as exchanges, from which they are made available to the exhibitors in accordance with the license contracts. The exchanges which serve Oklahoma, Texas and New Mexico are located in Oklahoma City, Oklahoma; Dallas, Texas; Denver, Colorado, Kansas City, Missouri, and Los Angeles, California. Generally, in the distributors' organizations, the chain of sales authority above the exchange manager consists of a district manager supervising several exchanges, a division manager responsible for sales over a larger territory, and, at the top, the chief domestic sales executive in New York City.

Initial negotiations for the licensing of films to exhibitors were usually carried on by the manager and salesmen of the particular distributors' local exchange who were acquainted with the exhibitors involved, although no licensing contract could licensed, and no more than five could be offered in any one block. Columbia (R. 1532) and Universal (R. 1540) still continued their former practice. United Artists has always released fewer films and licensed them in smaller groups (R. 1982-3).

be completed without the approval of the principal sales office in New York City.¹⁸ Thus, while the exchange employees have no general authority to enter into final licensing contracts, they necessarily determine what proposed contracts, if any, will be submitted to the New York office for approval. The normal course of their negotiations with an exhibitor is to discuss and agree upon terms, fill out a license form embodying these terms, secure the exhibitor's signature thereon, and transmit the proposed contract to the New York office for approval. The license, when signed only by the exhibitor, is treated as an application which does not become a binding agreement until approved by the New York office. Independent exhibitors competing with the defendants normally transact their business through the salesmen or branch managers, depending on the importance of the exhibitor (R. 1490-1, 1527, 1536, 1540-1). R. E. Griffith acted for all theatres in which any of the corporate or individual defendants had a financial interest (known as the Griffith circuit) during the period 1933-38, in making the defendants' deals with district or divisional managers at New York City (R. 2310-12, 2329, 2434-6, 2469, 2477, 2485, 2526-7, 2531-2, 2538-9, 2544-5, 2660).

¹⁸ In the case of United Artists, the approval of the producer of the film was also required (R. 1083).

Contracts licensing exhibitors to play feature films were normally made on the distributors' printed license agreement forms, a typical sample of which is set forth as Appendix B of this brief. While the conditions of the printed license agreements varied slightly as between the major distributors and from year to year, they ordinarily specified the season covered (p. 137), the number of feature films licensed for exhibition and the number which the exhibitor is required to play (pp. 137-141), the name of the theatre in which the films are to be played (p. 137), the rental or license fee for each film usually expressed as a combination of percentage of gross receipts and a guaranteed minimum rental (pp. 139-141), the minimum admission prices to be charged by the exhibitor for evenings, matinees, children and adults (p. 137), the run, i.e., whether the first or a subsequent playing of the films in a specified area, and the clearance¹⁸ applicable to the run and theatre in question (p. 142). These standard license agreements also

¹⁸ "Run" and "clearance" are here used as defined by the Court in *United States v. Paramount Pictures, Inc.*, 66 F. Supp. 33, 333, as follows:

"Runs—The successive exhibitions of a motion picture in a given area, first-run being the first exhibition in that area, second-run being the next subsequent, and so on."

"Clearance—The period of time, usually stipulated in license contracts, which must elapse between runs of the same picture within a particular area or in specified theatres."

provided that the exhibitor's continued enjoyment of the clearance and run privileges granted is dependent upon the exhibitor's maintenance of the specified minimum admission prices (p. 133). A further provision required the exhibitor to play the licensed films in the order of their release as prints are made available by the distributor (pp. 115, 141). This is essential procedure if subsequent runs of the films are to be licensed to other exhibitors (R. 1511-1512). *This was the form of licensing agreement by which feature films were licensed by the eight major film distributors to the appellees' independent competitors.*

The licensing agreements (contracts) are performed by the distributor notifying the exhibitor as the features licensed became available for exhibition under the contract, setting a specific date for its exhibition in the theatres licensed (known as "booking"), and delivering a positive print to the theatre in time for exhibition on the date set. The exhibitor performs by exhibiting the films in accordance with whatever commitments his contract imposes on him and by paying the rentals. If a film is licensed for a percentage of the gross receipts, the exhibitor reports the gross business done on the engagement.

Each exchange supervises the performance of the contracts made for the theatres in the area served by it and is charged with the responsibility

of making bookings and delivering the prints. After each run, the print is returned to the exchange for repairs and for delivery to some other exhibitor.

C. THE MASTER AGREEMENTS

The trial court's specific findings with respect to the pooling of the appellees' film buying power and the express terms and necessary effect of the master licensing agreements which they negotiated with the major distributors, were limited to the following: Finding 10—"The defendant corporation employed a joint agent in licensing motion picture films to secure economy and efficiency and to obtain the lawful advantages which normally flow from such co-operative effort. * * *" (R. 87); Finding 12—"The defendants did not condition the licensing of moving picture films in any competitive situation upon the licensing of such films in any other situation, or in any non-competitive situation upon the licensing of such films in any competitive situation" (R. 123). There is summarized hereafter the undisputed evidence as to the extent of the appellees' film buying power, the manner in which it was combined by the appellees, the scope of the master agreements and franchises, and their terms in contrast with the terms upon which appellees' competitors were able to license films from the same distributors.

1. *The purchasing power of the circuit.*—

On April 29, 1934, the beginning of the five year period, the appellee corporations owned financial interests in theatres in 37 towns; in 1939, five years later, they owned financial interests in theatres in 85 towns.¹⁷ During this same period, which is the period during which the master agreements and franchises were employed, the number of closed towns (those in which one of the appellees operated without competition) increased from 19 to 53. That is, during the five-year period, while the total number of towns in which appellees operated increased 125 per cent, the number of its closed towns increased by ap-

and from p. 24

	Total towns	Competitive towns	Closed towns	Percent closed towns to total towns
<i>April 29, 1934</i>				
R. E. Griffith and Westex (Plf. Ex. 261, R. 1100-13).....	8	2	6	75
Griffith Amusement.....	29 (R. 415-7)	10 (Def. Ex. 108, R. 2702).	10	30
Consolidated.....	9 (R. 431-2)	6 (Def. Ex. 109, R. 2703).	3	37
Total circuit.....	37	18	19	51
<i>April 29, 1939</i>				
R. E. Griffith and Westex (Plf. Ex. 261, R. 1100-13).....	31	1	28	90
Griffith Amusement.....	23 (R. 415-7)	14 (Def. Ex. 108, R. 2702).	8	35
Consolidated.....	32 (R. 413-2)	15 (Def. Ex. 109, R. 2703).	19	59
Total circuit.....	86	32	53	62

¹⁷Excludes six towns in which Consolidated also had an interest which are listed for that defendant. They are Alvin, Bay City, El Campo, Texas City, Victoria, and Wharton, Tex. (R. 1110-12).

proximately 300 per cent. Thus, the master agreements always combined theatres in competitive towns with theatres in closed towns, and included theatres operated by exhibitors affiliated with the appellees only by administrative agreements under which the appellees procured films for such exhibitors.

A sample master agreement by which this pooled film buying power was made effective is the one which R. E. Griffith, on behalf of the four appellee corporations and affiliated exhibitors, signed with Columbia Pictures Corporation for the 1936-37 season, and which is set forth as Appendix A herein (pp. 104-108). This master agreement involved the purchase of film for 53 theatres in 23 towns operated by Griffith Amusement Company, for 33 theatres in 14 towns operated by Consolidated Theatres, Inc., for 15 theatres in 8 towns operated by R. E. Griffith Theatres, Inc., for 34 theatres in 21 towns operated by Westex Theatres, Inc., and for 14 theatres in 6 towns operated by other exhibitors; a total of 149 theatres in 71 towns in Oklahoma, New Mexico and Texas. With respect to the theatres operated by the appellees, it appears that this agreement covers theatres in 40 towns where appellees had

¹⁷ The growth of the circuit in terms of competitive and closed towns during the five years preceding the complaint is shown in the following tabulation, which excludes Oklahoma City, as that town was excluded from plaintiff's claims of illegal restraint (R. 142).

no competition and 24 towns where there was competition.¹² The Agreement covered Columbia's expected output of pictures to be released during that season, consisting of 66 feature films and 126 short subjects, for which Columbia was guaranteed a minimum circuit film rental of \$65,000.00. For the 1937-38 season, the minimum commitments made by the circuit to each of the major distributors, except United Artists, ranged from \$50,000 (R. 2484) to \$265,000 (R. 2264-71), and totaled about \$1,200,000 (R. 2160, 2219, 2264, 2329, 2430, 2484, 2542). The film rentals received from the circuit by the Oklahoma City film exchanges of Fox, Loew, Paramount, RKO and Warner, amounted to about 30 per cent. of the total revenues of such exchanges during the seasons 1935-36 to 1938-39, inclusive (R. 1119-20).

¹² Griffith Amusement Company towns, exclusive of Oklahoma City, in which there was then competition were Ada, Elk City, Enid, Hobart, Norman, Okmulgee, Shawnee, Stillwater, and Duncan (R. 1573-74, 1577-79). The Consolidated Theatres towns, exclusive of Oklahoma City, in which the record shows there was then competition were Lubbock and Sapulpa (*supra*, pp. 43, 56). The record discloses that there was competition at the time of the trial in Chickasha, Cleburne, and Clinton (R. 1596-97) and the above computation assumes that such competition existed on August 31, 1936, although the record is silent as to what the competitive situation was in those towns at that date. Of the R. E. Griffith towns there was competition in Gallup and Hobbs, and of the Westex towns there was competition in Ballinger, Brady, Georgetown, Odessa, Plainview, and Stamford (R. 1101-13).

2. *The negotiation of the appellees' agreements with the major distributors.*—The film buying power of the appellees and of the theatres affiliated with them was combined by means of the master agreements and franchises¹⁹ which R. E. Griffith negotiated with the major film producers for the licensing of feature films from such distributors for all of the theatres operated by the appellee corporations and for the affiliated theatres. As in the 1936-37 master agreement with Columbia (set out in Appendix A), R. E. Griffith, with the assistance of Horace Falls, negotiated such master agreements and franchises in New York and signed them on behalf of all four appellee corporations and the affiliated theatres until the 1938-39 season. For that season R. E. Griffith negotiated in New York for R. E. Griffith Theatres, Inc. and Westex Theatres, Inc. (sometimes referred to as the Texas defendants) and Horace Falls negotiated in Oklahoma City for Griffith Amusement Company and Consolidated Theatres, Inc. (sometimes referred to as the Oklahoma defendants). (R. 1760.) Each half of the circuit represented in these latter negotiations was nearly as large or larger than the entire circuit in 1935.

3. *The express terms of the circuit's special licensing agreements.*—The master agreements were in the form of contracts for the exhibition in

¹⁹ A franchise is a master agreement covering films to be released during more than one season.

the theatres of the Griffith circuit of all the films to be released by a major distributor during an entire season, specifying the number of feature films involved, the theatres in which they could be played, the number and sequence of the runs on which they could be exhibited, and a minimum total film rental to be paid by the circuit. Some of the agreements provided that the appellees should be jointly and severally liable for the entire minimum rental for the circuit. The making of these master agreements was sometimes followed by the execution of individual contracts for each town involved on the distributor's standard form of license agreement. However, the master agreements contained provisions which were inconsistent with, and specifically superseded, some of the standard form provisions.

These master agreements had the following characteristics in common, most of which are illustrated by the master agreement with Columbia for the 1936-37 season (Appendix A, *infra*, pp. 104-108).

1. The master agreements and franchises were negotiated by and on behalf of two or more of the appellees plus the affiliated theatres for which they procured films under administration agreements.

2. They generally licensed the first-run exhibition of substantially all of the films to be released by the particular major distributor during a

period of at least one year, in substantially all of the theatres in which the appellees had a financial interest. In addition, they specified the towns for which second runs were licensed for exhibition by the appellees. These blanket agreements included in every case towns in which there were no competing theatres and a lesser number of towns where there were competing theatres.

3. They obligated the circuit as a whole to pay a total minimum rental based upon the use of the films throughout the circuit, although for accounting purposes the circuit rental was later allocated by the appellees among those theatres covered by the master agreements at which the films were actually exhibited.

4. They did not require the playing of any specified film in any specified theatre at any specified time. The time within which the films licensed were to be exhibited was generally a period of at least twelve months, commencing a few months after the commencement of the season in question. In some cases the circuit was required to play and/or pay for one fourth of its total film rental obligation during each quarter of the year, or one fifty-second upon a weekly basis. They expressly permitted playing the films licensed out of order of release, in contrast to the standard forms of agreement requiring the exhibitor to play the films as released by the distributor.

5. They frequently contained no provision specifying minimum admission prices for appellees' theatres, although this was a usual condition of the standard license forms.

6. They superseded the provisions of the standard license forms as to all conflicting provisions.

The form and method of negotiation of such agreements necessarily prevented consideration of competitive offers to license based upon a consideration of the merits of competing exhibitors for a particular run at a particular theatre. As the appellees' witness Sears, sales manager of Warner, testified, in negotiating such a deal the "overall revenue from the entire transaction" is considered rather than what a single theatre can pay (R. 1504). The appellees' witness McCarthy, Universal's sales manager, admitted that even those independents who paid him more film rental than Griffith had paid in those towns were given no opportunity to negotiate for a continuance of their runs when Universal negotiated its 1936-37 deal with the circuit (R. 1546).

The master agreements, in giving the circuit the privilege of playing films "out of order of release", superseded elaborate provisions in the standard licensing forms intended to compel the exhibitor to play the distributor's films as they were released and made available (App., pp. 115-17, 119-20, 125-27, 139, 141). Since the appellees were given periods of one year or more

in which to liquidate these master agreements, this privilege meant that films which the circuit did not use need not be made available to others until they had ceased to be current entertainment. In his 1938-39 negotiations with Universal, R. E. Griffith refused to agree to a clause requiring unused pictures to be released for exhibition by others within sixty days after they were made available to the circuit (R. 1552). During prior seasons, such a clause appears only in the Paramount franchise, as a part of a modification of a second run option (R. 2318-21) made after a complaint to the Department of Justice by an exhibitor at Plainview, who was unable to obtain second run product (R. 293-4).

This privilege of playing the licensed prior runs without regard to the order in which films were released²⁰ also tended to prevent competitors from licensing a regular run of films following the prior run exhibition in the appellees' theatres, since there was no assurance that the prior runs would actually be played in the order in which the films were released. As Warners' sales manager pointed out, the normal practice was to insist upon performance of the standard contract provisions as to playing in order of release "so that the normal runs could follow", but if "there

²⁰ The extent to which this and other special privileges inconsistent with the normal licensing practices expressed in the standard forms were incorporated in these master agreements is set forth in Appendix C, *infra*, pp. 143-7.

were no subsequent runs that were being held back by reason of the playing out of order of release" the exhibitor was given considerable leeway in this respect (R. 1510-11). Since control of the sequence in which their films were to be played had been thus surrendered by most of the major distributors to the circuit, the competitors of the circuit had no opportunity to deal with the distributors for films not used at all by the circuit or for subsequent runs of films played by the circuit on a prior run, except as the circuit should decide to make such films available to them. Even the Warner agreements, which contained no provision expressly authorizing playing out of order of release, but simply provided for completion of the runs licensed prior to a fixed date (Par. 5, R. 2509; Par. 6, R. 2526; Par. 5, R. 2531; Par. 5, R. 2537; Par. 5, R. 2543), gave no assurance that any particular film would play in any particular town at any particular time (R. 1498-99); what pictures a following run obtained within a reasonable time after release was entirely determined by how Griffith determined to play the first run (R. 1500).

The privilege of playing second runs in certain situations without additional rental liability was, in effect, an express agreement to protect the appellees from second run competition without compelling them to play or pay for such a run themselves. But in any event, no sale of a second run to an opposition theatre was contemplated.

In the course of negotiating these agreements, it was never suggested to the appellees' film buyer Falls that a second run might be sold to an opposition theatre if he did not license such run (R. 1816).

A first-run exhibitor is ordinarily required to charge a higher admission price than a subsequent run (R. 1513-14). Since the competing independents procured films on a standard form of license which required maintenance of a fixed minimum admission, the omission of such a requirement in the deals made with the circuit had the effect of giving it express permission to reduce prices on its prior runs to a price equal to or below that charged by a competitor for a later, less desirable run.

D. EXTENT OF APPELLEES' CONTROL OF AVAILABLE FILM PURSUANT TO MASTER AGREEMENTS AND FRANCHISES

A franchise agreement was made by the appellees with Loew covering the five seasons 1930-31 to 1934-35, inclusive, and one-year master agreements were made thereafter covering each of the ensuing four seasons. Paramount was unplayed by the circuit during the 1933-34 season, but a franchise was made with Paramount covering the three seasons 1934-35 through 1936-37 and one-year master agreements were made thereafter for each of the ensuing two seasons. RKO was unplayed by the circuit during the 1934-35 season but a franchise was made with RKO covering the three seasons 1935-36 through 1937-38. In

1938-39 only the Texas defendants made a master agreement with RKO. A franchise agreement was made with Columbia covering the three seasons 1937-38 through 1939-40. In each of the three preceding seasons a one-year master agreement was made with Columbia. One year master agreements were made with Fox and Warner for each of the years 1934-35 through 1938-39, and with Universal for each of these years, except 1935-36, when that distributor's films were unplayed by the circuit. Master agreements with United Artists were made for the seasons 1937-38 and 1938-39.²²² (See tabulation of master agreements and franchises in Appendix C to this brief, pp. 143-147).

The appellees' control over major film product through master agreements during the five seasons immediately preceding the complaint may be summarized as follows: They had such agreements with Fox, Loew, Paramount, Warner, Universal, and Columbia for 1934-35; with Fox, Loew, Paramount, Warner, Columbia, and RKO

²²² United Artists during the preceding three seasons was not regarded as "good enough" for many of these towns by one witness (R. 998), and was ranked by another as the least desirable of the eight majors (R. 947). Griffith's master agreements with other distributors invariably contained a special provision excluding foreign productions and its blanket deals with United Artists covered only the pictures of domestic producers, although a substantial part of the total product released by United Artists during the seasons 1934-35 through 1937-38 was foreign made (R. 1983).

for 1935-36; with Fox, Loew, Paramount, Warner, Columbia, Universal, and RKO for 1936-37; with all eight of the major defendants for 1937-38. The same situation prevailed in 1938-39, the season during which the suit was filed, except that RKO had no agreement with the Oklahoma defendants.

E. THE EFFECT ON COMPETITION

The effect of the master agreements upon the appellees' competitors, and the manner in which the appellees simultaneously expanded their theatre interests, is illustrated by the trial court's findings as to what occurred in 17 towns in Oklahoma, Texas and New Mexico (F. 11-1 to 11-25, R. 87-123), coupled in some instances with undisputed evidence which the court ignored.²² The following discussion departs from the order of the trial court's findings so as to arrange the towns as, first, towns where an independent exhibitor bought or built a theatre in opposition to the appellees, and, second, the towns in which the appellees built or bought a theatre in opposition to an independent operator.

1. Towns in which an independent exhibitor built or bought a theatre in opposition to the appellees.

²² While the trial court's findings relate to 25 towns, which comprise most of the competitive towns, it seemed sufficient to set forth here the facts with respect to 17 of the towns.

Ada, Oklahoma

The court found that in this town of 15,000 Griffith Amusement Company bought a 60 per cent. interest in three theatres from Foster McSwain in 1932, one of which was closed; that E. H. Kyser, who died in 1936 and his sister, Nona, successively, operated the Strand from 1933 until 1941, when she closed it, and the Ada, built and opened by her in 1936 and operated ever since; that Griffith reopened its closed theatre in 1935 and has operated three theatres there ever since. The court further found that Miss Kyser testified that E. R. Slocum, a representative of Griffith, called on her twice to persuade her to sell her theatres and each time told her that Griffith did not want competition in Ada, and that Slocum admitted the calls but denied that he said Griffith did not want competition in Ada (R. 88). It made no finding as to where the truth lay.

The finding relating to Miss Kyser's testimony as to her negotiations with the major film distributors, was that she "complains that she was unable to buy or procure the pictures of her choice from major distributors" (R. 88). Her undisputed testimony was that the Strand had been the first-run account in this town for Paramount during the 1933-34 season (R. 931) and for RKO during the 1934-35 season (R. 933). Exhibits P-1 (R. 2317) and RKO-44 (R. 2422) show that she lost each of these runs to

Griffith in the succeeding seasons by reason of the franchise deals which the circuit made with these companies in 1934 and 1935. She also had Universal on first-run in 1935-36, but lost all except the inferior films in the succeeding season, when the circuit made a master agreement with Universal for "the twenty top allocated pictures" (Ex. U-2-B, R. 2476). Griffith never played a third run in Ada of Fox, Paramount, or Warner films (R. 953), nor did its master agreements expressly cover such a run. Miss Kyser tried to buy such a run on their better pictures, following Griffith's first and second runs, from 1936 through 1938, but during this period none of them would even take an application from her (R. 936).²

The court concluded that Miss Kyser's failure to procure film for her theatres was not occasioned by any illegal acts of the appellees, apparently because "the Ada has operated at a profit and that the Strand, while not operating at much of a profit, had been able at all times to operate until she voluntarily closed it." Since she was not entirely eliminated from

² Kupper, Fox's sales manager, admitted that his company's failure to sell Miss Kyser was due to a desire to protect "our first-run revenue" (R. 1363) and that this policy was changed when "we were ordered, you might say, to sell some run" (R. 1363) by the consent decree in *United States v. Paramount Pictures, Inc.* Even before the decree was entered the policy was modified in response to complaints forwarded by the Justice Department when "we saw the writing on the wall" (R. 1363-4).

the business, the concerted use of the appellees' film buying power to deprive her of films was merely "the ordinary problems attendant upon the business in which she was engaged" (R. 88, 89).

Altus, Oklahoma

The court found that this town had a population of about 9,000 in 1936; that at that time Consolidated owned a half interest in three theatres operated by W. T. Spears, who owned the other half, one of which theatres had been operated only part time and was abandoned that year; that C. C. Hamm then came into the town and remodeled a store into a theatre, called the Ritz, which he operated for about a year until he sold out to Spears in 1937 and agreed not to operate a theatre there for the next ten years. The court's findings as to Hamm's film negotiations consist of the statement that Hamm "found there was no product available of the major distributors for the 1936-1937 season except Universal which he obtained and played" (R. 89). While this product was played by him during the 1936-37 season, it consisted of Universal's 1935-36 releases (R. 752). Griffith and Spears were playing no regular second run of any major distributors' films at Altus (R. 753), although their master agreements with Fox, Loew, Paramount, and Warner gave them the privilege of a second run there without additional film rental (Ex. F-5, R. 2213; Ex. L-5, R. 2262; Ex. P-3,

R. 2326, 2322; Ex. W-7, R. 2540). Hamm had operated a second run theatre at Vernon, Texas (population 9,137), since 1939. Columbia, Fox, Loew, Paramount, RKO, and Warner all refused him a second run at Altus (R. 752), although four of them had sold him second run at Vernon since 1933 (R. 763-4). Consolidated and Spears each acquired a half interest in Hamm's theatre (R. 1747) and operated it as a second-run theatre (R. 1596). Hamm agreed "not to come into Altus" for ten years (R. 1750, Def. Ex. 162).

The court concluded that this situation was not the result of any of the unlawful acts charged in the complaint. The apparent basis for this conclusion was that the sale was "voluntary and mutually satisfactory" (R. 89). The court also said that Hamm and his brother "had left a trail of unplayed pictures of many major distributors which they had contracted to play" (R. 89). No distributor representative testified that this was the reason why Hamm could not buy a second run in Altus nor could any of those who were selling him in Vernon have plausibly made such a statement. Also, that court's rulings prohibited the complaining witnesses from testifying as to the reasons assigned by the distributor representatives for their refusals to sell (R. 228).

In any event, the optional second run provided in the appellees' master agreements was an obvious bar to a sale of second run to Hamm during the season he operated, even though

Griffith did not play or pay for such a run. These agreements thus prevented Hamm from becoming an effective second run competitor during the year he operated. His potential competition was eliminated by the purchase of his theatre and the accompanying agreement not to compete in the future.

Blackwell, Oklahoma

The court found that Blackwell had about 10,000 population; that in 1938 Griffith Amusement Company was operating two well-equipped theatres there of 400 and 700 seats, respectively, and that the Bays, owned and operated by Laham Theatre, Inc., was a well-equipped theater seating 1,200; that Griffith's theatres were playing Fox, Paramount, Columbia, Universal, Warner, and Loew on first run and that the Bays could not make deals with Fox, Paramount, Columbia, Warner, or Loew for second run; that during the 1938-39 season it got first and second run from RKO and some second run Metro (Loew); that in the spring of 1939 Griffith opened a third theatre and played second run pictures of Fox, Paramount, Columbia, Warner, and Loew and that in October, 1939, the Bays was sold to Griffith, operated for a time, and then closed (R. 90).

Although the Bays was larger than the two Griffith houses combined, and although the defendants' master agreements for the 1938-39 season enabled Griffith to tie up all major first run

product, except RKO, for that season and necessarily resulted in the refusal of these distributors to license the Bays on second run (even though Griffith neither played nor paid for such a run), the court concluded that there was nothing illegal in the situation at Blackwell.

Brady, Texas

The court found that in this town of 5,000, Aubrey Morgan bought the Ritz Theatre in December, 1935, and operated it until November, 1936, when he sold it to "Jack Pickens, agent for Brady Amusement Company, Westex Theatres and R. E. Griffith Theatres, Inc."; that Westex operated the other theatre in the town, the Palace, and that Stocker of Westex told Morgan in October or November, 1936, that Westex had bought Universal (which Morgan had played during the 1935-36 season) for the 1936-37 season; that Pickens then approached him and the sale of his theatre was concluded about six weeks later (R. 91). The court concluded that there was nothing unlawful in this situation, noting with respect to film licensing restraints only that Morgan was "a speculator" who complained that he was unable to buy from major distributors the pictures he desired to exhibit. His specific complaint was that Universal "sold away" from him to Westex without giving him a chance even to negotiate for the product (R. 1032-34), and this testimony was undisputed.

Apparently because he was a "speculator" who might make competitive trouble for the circuit elsewhere, when Morgan sold out he had to agree not to engage in the theatre business anywhere in Oklahoma, Texas, and New Mexico for five years (Ex. 133, R. 2052). His theatre was operated for a short time after its purchase by the defendants and then closed permanently (R. 1105).

Duncan, Oklahoma

The court found that in this town of 9,000, J. D. Guest opened the Ritz Theatre in 1930 and enlarged it in 1932 to a capacity of 365; and that Griffith Amusement Company operated the Palace and the Folly and played first run pictures of major distributors. The court further found that Guest played first run and second run pictures of many of the major distributors and that he contended that he could not obtain from some major distributors the films of his choice or any at all, but that his testimony was unsatisfactory as he was not inclined to be positive; that his father, James H. Guest, testified that in 1933 or 1934 he was accosted by a man who said he was one of the Griffith brothers and who inquired if he wanted to sell the Ritz, take a few hundred dollars, and move to a new location, but that the witness could not identify any of the defendants as the man to whom he talked and was quite vague (R. 95). The court concluded that "if J. D. Guest has had any difficulty in securing

product for the Ritz theater" it was not occasioned by any combination among the defendants to control the exhibition of motion picture films (R. 96).

License contracts in evidence (R. 774, 776) showed that Guest's theatre had the Paramount and RKO films during the seasons immediately preceding the incorporation of this town in the franchises jointly negotiated and executed by the appellees with these distributors and that he had the Universal product during the 1935-36 season first and second run (R. 777), the year preceding that in which Duncan was incorporated in the master agreement made by the appellees with Universal.

Guest tried to buy a second run from Paramount, Warner, Metro, Fox and RKO during the period 1933-34 through 1938-39 (R. 778), but was never able to induce them even to submit a deal to their home offices on any terms (R. 779), although Griffith did not use their product second run in this town. The master agreements made with Fox, Loew, and Warner during the same period had express provisions calculated to prevent a sale of a second run to any competitor of Griffith, as noted in the tabulation of them in Appendix C. Whether Guest's testimony as to his negotiations with the major distributors is regarded as vague or precise, there is no dispute in the record about the fact that he operated a theatre in the

town of Duncan during the period 1933-34 through 1938-39, that he was a potential user of second run films from these four companies, and that he got no such films from them until April, 1941 (R. 779). Section VI of the consent decree of November 20, 1940, to which these distributors were parties, required them to discontinue the practice of refusing to sell a run as a means of protecting the revenue of a prior-run exhibitor.

Lubbock, Texas

The court found this to be a town of about 30,000, aside from Tech College, which had about 5,000 students; that in June, 1936, Bearden and Smith opened a theatre called the Tech, near the college campus, a mile and a half from downtown Lubbock; that Consolidated owned 50 percent of three theatres operated by Lindsey Theatres, Inc., for which it bought and booked the films, and that two other theatres were operated by an independent named Mauldin; that in 1938 Lindsey Theatres bought a building site near the college and erected a sign saying "Home of New Campus Theatre"; that the lot was not zoned for business; that a later attempt to have it so zoned failed; that representatives of Lindsey Theatres tried to buy the Tech without success and then built a theatre near the campus in 1940 which was called the Tower, shortly after having bought out Mauldin in 1939. The court recited contradictory testimony of Bearden and Smith

on the one side, and the defendants' representatives on the other, concerning alleged threats, but made no finding as to where the truth lay. It did find "nothing in the situation at Lubbock as to leases, sales or contemplated sales that was brought about or occasioned by coercion or threats upon the part of any of the defendants" (R. 105-109).

The testimony with respect to film licensing was disposed of by the finding that "it seems to have been a controversy with reference to the decision of some of the distributors that having licensed their product for Lubbock, they could not also license the same product to the Tech theatre. Bearden and Smith contended that an exception should be made as to the territory in which they operated. Upon this controversy they could not agree" (R. 109).

Bearden's undisputed testimony was simply that while they could not even submit an application for a better run at the Tech (R. 483), when the Tower opened it was immediately permitted to play on second run, 100 to 120 days ahead of the Tech (R. 484). The Tech, charging 25 cents admission, was also compelled to follow the defendants' Texas, charging 20 cents, during 1938-39 and 1939-40 (R. 486-7).

Phillips, Texas

The court found that Phillips was a town of about 6,000, which is one and a half or two miles from the business district of Borger, a town of

12,000; that in December, 1939, Bearden and Smith leased some property in Phillips and began the construction of a theatre in January, 1940, which they opened on March 12, 1940, as the Phillips Theatre; that at the time they made the lease they made a season deal with Warner first run to play 30 days after the Griffith theatres first run in Borger, a part-season deal with Metro, and were offered no product from any other major distributors; that after construction of the Phillips began the appellees began the erection of a theatre called the "66", which they opened in Phillips a week before the Phillips; that the Phillips closed after six-months' operation, was repaired and reopened and later almost completely destroyed by fire in 1941, when it was abandoned by Smith and Bearden; that Griffith then abandoned the "66" as a result of expansion of the Phillips Refinery, and bought and rebuilt the Phillips, which it now operates under the name "66"; that there was a meeting between the defendants and Bearden and Smith about "buying or selling" while the two theatres were in operation, but nothing came of it. The court then noted that the evidence related to transactions occurring after the suit was filed, but added that there was nothing in the situation to warrant a finding of law violations at Phillips, in any event (R. 112-113).

The evidence was undisputed that the Phillips was much larger than the "66" (R. 726) and

yet could not secure more than one current major product first run in Phillips at a time when the only opposition was the Griffith Theatres in Borger (R. 725-6). The evidence is also undisputed that the Metro product referred to by the court was the lower half of its 1939-40 releases (R. 726) and that the current Warner product in most instances was not available to the Phillips until it had played both the Griffith first and second run theatres in Borger (R. 726).

Plainview, Texas

The court found this to be a town of 8,534 in 1930 and 8,236 in 1940; that Dennis Sealing opened the Fair Theatre in January 1936 and operated it for 42 weeks, playing the 1935-36 product of Universal and some of United Artists'; that the Granada and the Texas were operated by R. E. Griffith interests, which played the "product of the large distributors"; that the Granada was an "A" theatre of 1,100 seats, the Fair, next in size and equipment with 650 seats, and the Texas, a "B" house seating 450; that after the Fair was sold to the R. E. Griffith interests in October, 1936, all theatres in Plainview have been operated by Westex Theatres, Inc. (R. 113-114). As part of the sales agreement, the operators of the Fair covenanted to stay out of the theatre business in Plainview for an unlimited period of time (Ex. 3, R. 2001). The court made no findings as to Sealing's negotiations

with the major distributors but found that the sale was not brought about by any unlawful restraints in Plainview (R. 116).

There was undisputed evidence that Griffith did not play its major first run product on second run in this town (R. 241) and that Sealing had tried without success to license second run from the major companies (R. 232-3). His correspondence with them in this connection was excluded (R. 232-3), as was his statement of why they would not license it (R. 296). There was also undisputed evidence that Sealing had no opportunity to renew his first run contract with Universal for the 1936-37 season. He was orally offered half the picture, but was never given an opportunity to sign an application (R. 235).

Stillwater, Oklahoma

The court found this to be a town of about 6,000 aside from Oklahoma A & M College, which had a student body of about 2,500 in 1928; that at the time of the trial the population was about 10,000 and the student body about 4,500; that Ray Russ took over the Camera Theatre in 1928 with no prior experience as an exhibitor, and operated it in opposition to Griffith Amusement Company's Mecca and Aggie theatres until 1931, when it was pooled with the Mecca on a 50-50 basis and the Mecca was then closed; that after 20 months of this arrangement Russ became dissatisfied and bought

certain product²² over the objection of the Griffith interests, which resulted in dissolution of the partnership; that Griffith built the Campus in 1939, a model theatre seating 432, which played A and B pictures second run; that Griffith's Aggie, with 710 seats, plays "A" pictures first run and Griffith's Mecca, with 432 seats, plays "B" pictures first run, and that Russ' Camera, seating 432, plays "A" and "B" pictures subsequent run (R. 121-122). There are no findings as to Russ' attempts to buy films in opposition to Griffith except the general conclusion that nothing done by the appellees' at Stillwater violated the law.

The evidence is undisputed that Russ lost Paramount to Griffith when the franchise (Ex. P-1, 3, R. 2299) was made, and that he lost the best Universal product to Griffith when the 1936-37 master agreement (Ex. U-2, 3, R. 2475, 2477) was made. Russ contracted for all of Universal's 1935-36 feature productions (Pltf. Ex. 346, R. 833). For the 1936-37 season, Griffith's master agreement with Universal committed Griffith to play only 20 features first run in Stillwater (Ex. U-2, 3, R. 2475, 2477). Universal offered Russ a first run contract for lower quality product, exhibition not to start until February 1, 1937, and also to be played at 10 cents and 25 cents (Pltf. Ex. 347, R. 834). This contract provided that

²² He bought Paramount while Paramount was out of the Griffith circuit (R. 827).

Universal could eliminate any 12 features and Russ was to play the remaining 24. The 12 pictures eliminated from Russ' contract were the best, or the "A" pictures. They played at the Griffith theatres and Russ got the "B" and "C" pictures (R. 834).

2. *Towns in which appellees built or bought a theatre in opposition to an independent exhibitor:*

Gallup, New Mexico

The court found that Gallup had a 1930 population of about 6,000; that William Nagle was then operating the El Morro Theatre there in opposition to the Cairo and Rex; that El Morro was a modern, deluxe theatre with 877 seats, and that when it opened in 1928 Nagle was able to secure pictures of his choice from most of the major distributors; that in 1930 R. E. Griffith Theatres, Inc. entered Gallup by purchasing the Cairo and that in 1936 it converted a store building into another theatre which "exhibited largely second-run pictures." These two theatres each had a seating capacity of 800. The court found that Nagle testified that after R. E. Griffith Theatres, Inc., entered Gallup he was unable to buy or procure pictures of his choice from major distributors, except MGM and Paramount, but the court found that he was from time to time able to procure RKO and Universal (R. 99-100).

Nagle's undisputed testimony was that he had the best theatre in the town (R. 746) and that

after Griffith came in he was not even allowed to sign an application with Fox or Warner (R. 743); whose pictures he had previously used (R. 741); that he had RKO in 1934-35, but RKO was sold away from him the succeeding season when Griffith made its franchise with that company; that Nagle did not even receive a reply to a letter he wrote the RKO home office about buying the 1935-36 product (R. 743-4); that he had Universal for 1935-36, which he lost to Griffith for 1936-37, notwithstanding a trip to Los Angeles in an effort to retain it (R. 744-5). During the 1938-39 season he had only Paramount and Loew of the eight major distributors, while Griffith, with its inferior theatres, had the other six (R. 745).

Hobart, Oklahoma

The court found that Charles Mahone entered this town of 5,000 in 1918, operating two theatres with no competition for ten years; that in 1928 and 1929 competing theatres were operated by other independents; that Mahone sold his theatres to Consolidated Amusement Company in 1930, which later defaulted on the notes given to Mahone for the purchase of his theatres; that Mahone then took over operation of the Oklahoman as agent for a receiver. In 1932 Griffith Amusement Company acquired the Kiowa from the receiver and Mahone bought the Oklahoman in August, 1935. On March 22, 1936 Mahone

acquired the Palace from an independent competitor, but closed it in 1943 (R. 101-2).

As to Mahone's complaint that he was unable to procure the character of product he desired to play, the court said that "he always has had good and sufficient product, and is still operating the Oklahoman" (R. 102). Mahone's undisputed testimony concerning his film negotiations with the major distributors was that he had bought and played RKO first run for the 1933-34, 1934-35, and 1935-36 seasons (R. 983), and that he was given no opportunity to negotiate for it for the 1936-37 season (R. 985, 988); that in November, 1935, he wrote to Depinet, vice president of RKO in charge of distribution (Ex. RKO-21A, R. 2636), but received no reply (R. 988). This product had been sold to Griffith by the RKO franchise (Ex. RKO-44, R. 2483, 2435) on March 19, 1935. Mahone was apparently able to play RKO for the 1935-36 season only because his contract for that year (Ex. 357) was approved in March, 1934 (R. 2091).

The court's finding that Mahone always had good and sufficient product for the Oklahoman was apparently based on his having three of the eight major companies; which was more than any other independent opposing a Griffith theatre had except Moulder at Sapulpa. Mahone's testimony that he had no major first run product except Fox, Metro, and Universal after the 1935-36

season for his two theatres (R. 999) was undisputed.

Hominy, Oklahoma

The court found this to be a town with a population of 3,267 in 1940 and that the Pettit Theatre, seating 1,000, was the only theatre there until 1934, when a Mr. McLain converted a store building into a 390 seat theatre; that both theatres were operated by independents and played the product of major distributors; that on June 15, 1936, McLain sold out to Consolidated Theatres, Inc., and that Vincent, operator of the Pettit, talked to H. J. Griffith about a sale of the Pettit late in 1937; that negotiations dragged on until July or August, 1938, when Vincent told Griffith he would accept his offer to buy but that the deal was not consummated until February 8, 1940 (R. 163-5). When he sold, Vincent agreed not to compete or invest money in a theatre in Hominy or in Osage County for ten years (Ex. 262).

The court's only findings as to Vincent's film buying negotiations after Consolidated entered the town was that after Vincent expressed concern to L. C. Griffith about procuring product for the Pettit, and Griffith had advised him in substance that he would talk to his buyer, H. R. Falls, and see what could be done for him, Falls asked him if he would be satisfied with Columbia and United Artists product; that later a certain group of approximately 20 pictures was released by Consolidated Theatres, Inc., and the distributor licensed

the group to Vincent (R. 104). Vincent's 1,000 seat theatre obviously needed more than two major products, but the appellees' 390 seat theatre had tied up six majors through the master agreements for the circuit then in effect. The court's assumption that it was proper and natural for Consolidated's competitor to go to Consolidated rather than a major distributor for the right to play the films of the latter course meant that a finding of no restraint of trade in this and every other competitive situation where the circuit controlled the supply of major films would follow as a matter of course.

Mangum, Oklahoma

The court found that Mangum had 4,806 population in 1930 and 4,193 in 1940; that Pat Duffy operated the only theatres there from 1933 until 1937, when Consolidated reconverted an old theatre which had been used as a mercantile building into a theatre called the Greer; that representatives of the appellees had persuaded Duffy to execute a 30-day option to sell his theatres for \$22,000 shortly before this, which the defendants did not exercise because Duffy's lease on one of them could not be renewed at the existing rental; and that Duffy finally sold his theatres to Consolidated for \$12,000 in April 1939 (R. 109-110). By the bill of sale (Pltf's Ex. 40, R. 2029), Duffy and his family agreed not to "become interested in any motion picture or vaudeville enterprise" in Man-

gum or Greer County for ten years. The finding recites contradictory testimony regarding threats made to Duffy during the course of the negotiations to buy him out and concludes that the financial pressure which made Duffy sell was caused by bad economic conditions rather than by the defendants (R. 110-11). But there is no dispute that the opening of a third theatre in this town scarcely large enough for two theatres, resulted in the defendants paying \$10,000 less for Duffy's theatres than they had been willing to pay before the third theatre opened (R. 110). After Duffy sold out the defendants operated only two theatres in Mangum (R. 1616, 1696).

Norman, Oklahoma

The court found that this town of about 10,000 was the seat of the State university, which, during the time involved in the finding, had a student body of between three and four thousand; that Ray Berry and his widow, Juanita Berry, successively, operated the Campus Theatre there until 1936, when her lease was not renewed and it was leased to Griffith Amusement Company; that it was then closed, but was remodeled and reopened in 1940 by Griffith; that during that same period Mrs. Berry also operated the Oklahoma Theatre and Griffith operated the Sooner and the University, both about twice as large as her theatres, and that in 1937 it remodeled a closed theatre and reopened it as the Varsity (R. 111-12). The court disposed of Mrs. Berry's

situation by characterizing her testimony as a complaint that the Campus was "leased out from under her" and that her inability to secure pictures was "in some manner the fault of her competitors in controlling the exhibition of moving picture films" (R. 111-112). The court then concluded that the acquisition of the Campus lease by Griffith was not "brought about or occasioned by any coercion or threats" and that there was no unreasonable restraint of trade at Norman (R. 112).

The testimony is undisputed that until the 1937-38 season Griffith played no second run at Norman (R. 656-7) and that in 1935-36 none of the seven majors which were then selling Griffith first run there would sell Mrs. Barry a second run (R. 660-61); that in the 1936-37 season only Universal and United Artists would sell her a second run (R. 659-60); that she got some of the Class "A" major pictures on second run in 1937-38, but that after Griffith opened the Variety such pictures were exhibited on second run by Griffith (R. 662, 669). She had successively lost a first run of Paramount, RKO, and part of Universal to Griffith in 1934-35 (R. 657-8), 1935-36 (R. 658), and 1936-37 (R. 659-60), when franchises or master agreements were made with Griffith. The only major first run product she was left with was part of United Artists in 1937-38 (R. 666-7) and in 1938-39 she lost that but acquired RKO (R. 669), which was left out of the

Oklahoma defendants' half of the circuit that year.

Sapulpa, Oklahoma

The court found this to be a town with 12,249 population in 1940, where Alexander Moulder has operated moving picture theatres since 1909, always with competition; that he has operated the Criterion, a 1,200 seat theater, since 1931, and that in 1931 or 1932 Griffith Amusement Company acquired an interest in the Yale, the 750 seat opposition house; that Griffith began construction of a second theatre after this suit was filed and opened it on a second run policy (R. 116-17). There was no finding covering Moulder's film buying except that in 1931 and 1932 he was playing "in the Criterion and the Empress [closed in 1932] first-run pictures of Fox, Paramount, MGM, United Artists and a few from Columbia" (R. 116), and that at the time of the trial he had first run of Columbia, Fox, Paramount, United Artists and some independents (R. 117).

There was undisputed evidence that although Moulder had played Loew films "ever since they have been in business" (R. 629), he was unable to negotiate with Loew for the 1932-33 product (R. 630), which was sold to Griffith for the Yale (R. 630). He and his attorney then called on D. T. Johnston, Griffith's attorney (R. 972), who "released" Columbia pictures to him (R. 631-32). Columbia's films were not as valuable a box-office attraction as Loew's (R. 645) and

Loew has never offered its films to Moulder since the 1932-33 season (R. 633).

The court's finding also recited contradictory testimony concerning threats made to Moulder by representatives of Griffith in the course of negotiations for the acquisition of his theatre or an interest in it, including a threat to cut admission prices (R. 116, 117). The evidence is undisputed that after Moulder was approached by representatives of Griffith about selling his Criterion theatre to them, the admission price at Griffith's Yale was reduced to 15 cents and two-for-one nights were put into effect for a time (R. 636), and that Griffith later opened a second theatre on a second run policy in 1940 at 15 cents admission (R. 636).

Seminole, Oklahoma

The court found this to be a town of between 10,000 and 11,000 population where Joe Love opened the Chief Theatre, 562 seats, in October, 1936, "as a first-run house"; that Griffith Amusement Company was then operating the Seminole, playing "A" pictures first run of "many of the major distributors", the Rialto, second run of the "A" pictures, and the State with first run "B" pictures; that before going into Seminole "Love learned that of the major distributors only Universal first runs for the season had not been sold"; that the evidence didn't show why he couldn't obtain these pictures at that time; and that after Love opened the Chief a price war developed, for

which Love was equally responsible with Griffith (R. 117-18). The court further found that although no third runs were being shown when Love entered the town and he was unable to procure them from the major distributors "for some time", later the distributors did make sales of such films to Love and Griffith (R. 118).

The evidence is undisputed that in October, 1936, Universal took Love's application for its 1935-36 releases on first run, which Griffith had not bought since it was out of the circuit that season, and that it did not approve the application until October, 1937, by which time these films were two years old (R. 881-2). The record also shows that Universal came back into the Griffith circuit for the 1936-37 season by a master agreement (Ex. U-2) made in August, 1936 (R. 2475).

After failing to secure first run films for his theatre, Love tried to buy third runs from all the majors, but they would not even discuss terms with him (R. 882-3). It is also undisputed that he got none until June, 1940 (R. 883). The "some time" referred to by the court was thus the seasons 1936-37 through 1939-40. The court's conclusion that Love's inability to get product results from no unlawful act of the defendants ignores the express terms of the master agreements in effect during the 1936-37, 1937-38, and 1938-39 seasons, which effectively prevented the sale of a run following Griffith.

Shannon, Oklahoma

The court found this to be a town of 22,053 in 1940, where Jake Jones had begun operating the Cozy Theatre in 1914; that in 1926 he sold this theatre to the Griffith brothers and in 1929 he leased the Criterion, constructed by him in 1927, to the Griffith Amusement Company for ten years at a rental of \$561.51 per month, which was reduced in 1931 to \$500 a month and again in 1932 to \$400 a month for the next two years; that in 1927 Griffith Amusement had also built a deluxe theatre, the Bison, and on May 1, 1933, opened the Victory, which it had acquired in 1931 but kept closed; that prior to Jones' sale of the Cozy to the Griffiths, he had three theatres in opposition to him operated by others (R. 118-121). The evidence as to film licensing is covered by the following statement:

During the time Griffith Amusement Company was operating the theaters it had leased from Jake Jones, the distributors sold Griffith Amusement Company the film product they had formerly sold to Jones. Jones complains that some of these accounts he was never able to recover when he again engaged in the business (R. 121).

The circumstances under which Jones again engaged in the business were as follows:

When Griffith's lease on the Cozy (renamed the Ritz by them) expired in 1931, Jones again took over its operation (R. 299). In 1936, Seminole Amusement Company, a corporation in which he

and his son Johnny were interested, acquired the State (R. 534). Since 1931 they have been Griffith's only competitor in the town.

There was no dispute about the fact that after Griffith opened the Victory in 1933 it played Metro product there on second run and that Jones had been previously playing it at the Ritz. Although Jones had it for the 1931-32 season (R. 302), he was not offered the 1932-33 pictures, which were sold to Griffith for exhibition at the Rex (R. 303). There was a dispute as to whether or not Griffith had threatened to open another theatre and deprive the Ritz of film product unless Jones made a further reduction in the Criterion rental. The request for a reduction in rental was admitted, but the threat attributed to R. E. Griffith was denied and the court found it was not made (R. 120). There is also no dispute that the request for a further rental reduction was not granted, a closed theatre was then reopened by Griffith, and the second run Metro product was then taken away from Jones.

The effect of the Paramount and RKO franchises on Jones' business was also undisputed. When Jones tried to find out from Paramount why they had sold the 1934-35 product away from him he received the following reply from Agnew, the general sales manager (Ex. 120, R. 2051), dated October 2, 1934:

* * * In the instance of our sale to the Griffith Amusement Co. it was simply a matter of bettering our income from the

territory as a whole so materially that I could not conscientiously, in the best interest of the stockholders and other people who have their money in this company, refuse to sell them. . . .

I do not quite see how Mr. Dugger could have promised you our product for three years in Bartlesville and Shawnee because such a promise would amount to a franchise and it is against the company's policy at this time to write franchisees.

The franchise with Griffith (Ex. P-1, R. 2298, *et seq.*) had been made less than a month before.

When Jones acquired the State in 1936 it was charging 35 cents for adults and 10 cents for children, with a stage show. It reduced its price to 15 cents and 10 cents when it played straight pictures (R. 535). Jones' Ritz was charging 15 cents for adults and 10 cents for children, except on the Sunday, Monday, or Tuesday change, when it would sometimes charge 25 cents. It was exhibiting second or third run, except for a few United Artists pictures first run (R. 535). Price restrictions were generally written into their contracts (R. 536).

Griffith's Avon Theatre played Fox ahead of Jones' State at a 10 cent matinee price while the State continued to play Fox at 15 cents (R. 538). On April 29, 1938, Seminole Amusement Company entered into a contract with Griffith Amusement Company whereby the equipment of the Criterion and State Theatres was sold to Griffith and the Seminole Amusement Company agreed

to close the State Theatre and covenanted that it would not be used as a theatre for a period of 25 years. Seminole also agreed to make a new lease on the Criterion to Griffith at the reduced rate of \$300 a month (Ex. 273, R. 538-9).

F. THE TRIAL COURT'S CONCLUSIONS

Findings 12 through 15 are conclusions to the effect that the appellees did not condition the licensing of films in one situation upon another, that they did not acquire or maintain closed theatres for the purpose of discouraging or eliminating competition, that they were guilty of no predatory practices, and that they acquired no theatres by virtue of any combination or conspiracy in restraint of trade (R. 123-4).

Finding 16 states that all agreements not to compete made with the appellees²² were reasonable, except that relating to Brady, Texas, as to

²² The number and scope of these agreements is set forth below in the following table:

Ex. No.	Official and Received	Location	Time
2	R. 538, 540	Plainview, Tex.	Unlimited.
125	R. 540, 542	Brady and all towns in New Mexico, Oklahoma and Texas where Griffith operated.	5 years.
18	R. 457, 458	Blackwell, or Kay County, Okla.	10 years.
19	R. 473, 473	Drumright, Creek County, Okla.	10 years.
20	R. 473, 473	Drumright, Creek County, Okla.	10 years.
25	R. 474, 474	El Reno, and Canadian County, Okla.	10 years.
31	R. 474, 474	Enid, and Garfield County, Okla.	10 years.
305	R. 512, 512	Hominy, or Osage County, Okla.	10 years.
39	R. 646, 646	Kingfisher, Okla.	10 years.
40	R. 646, 646	Mangum, and Greer County, Okla.	10 years.
43	R. 646, 646	Ponca City, and Kay County, Okla.	10 years.
12	R. 472, 472	Bartlesville, and Washington County, Okla.	25 years.
375	R. 539, 539	Shawnee, Okla.	25 years.
Def. 103	R. 1730, 1730	Altus, Okla.	10 years.

which the court found, "In the contract of sale in Brady, Texas, the territory covered was unreasonable and the contract was void as to all territory covered except Brady, Texas. As to the time limit and the territory consisting of Brady, Texas, the clause in the contract 'was reasonable'" (R. 124). The court evidently overlooked the agreement in Plainview (Ex. 3, R. 2001) which contains no time limitation, but all of the agreements, except those two, apparently complied with applicable state law when individually considered. They were offered simply as evidence that the appellees wanted to prevent and did repeatedly prevent any future competition from the competitors they bought out by express agreement.

Finding 17 is that the defendants' pooling agreements were lawful (R. 124), and finding 18, that the so-called administration contracts under which they bought and booked films for their theatre-operating affiliates, were lawful (R. 124-5). A sample administration contract, which covers Altus, Oklahoma, is Pltf. Ex. 10, which is printed in full at R. 2007-10, and provides for the payment of four percent of the theatres gross in return for management service and the buying and booking of films by the defendant Griffith Amusement Company. These agreements expressly contemplate the purchase of films under master contracts fixing blanket rentals for the circuit and that such rentals shall be allocated proportionately "solely at the discretion" of the

purchasing defendant. A sample pooling agreement is Plff. Ex. 30, which is printed in full at R. 2019-24, under which four theatres in Enid were brought under common management and the profits and losses divided between the defendants Griffith Amusement Co. and Texas-Oklahoma Enterprises, Inc. Such agreements, by their express terms, eliminated all actual and potential competition among the parties in licensing films and operating motion-picture theatres.

Finding 19 states that the defendants did not compel or attempt to compel the distributors named in the complaint to give them any substantial advantages over their competitors (R. 125), and finding 20, that none of them conspired or combined with each other, their operating associates or the distributors to unreasonably restrain the terms on which films were made available to their competitors (R. 125).

Finding 21 states that there was no agreement, express or implied, between the appellees and any distributor which unreasonably restrained interstate commerce in motion-picture films, and that the master licensing agreements did not do so. Finding 22 states that there was no agreement to restrain unreasonably the licensing of films not used by the defendants (R. 126), and finding 23, that they did not monopolize or attempt to monopolize first, second, or subsequent run films in any situation (R. 126). The fact that by their master agreements they habitually controlled the

prior runs of six, seven, or all of the eight major distributors in substantially every town in which they operated was undisputed. The remaining seven "findings of fact" simply reiterate in different form the court's ultimate conclusion that there was no unlawful agreement or conspiracy among the defendants or between them and the major distributors and that the defendants had committed no unlawful acts of any description (R. 126-7).

C. THE EXCLUDED EVIDENCE

1. *Conversations.*—The court excluded conversations between the complaining witnesses and sales representatives of major distributors which amplified or supported admitted evidence. Thus, the court permitted Scaling to testify that he could not license on second run at Plainview, Texas, major film product which the appellee Westex Theatres, Inc., was playing on first run during the 1935-36 season (R. 232), but excluded his testimony that their representatives told him to see R. E. Griffith about securing the right to play such product (R. 296). The Paramount franchise (Ex. P-3), on its face, gave Griffith a subsequent run without any additional charge in any town except Oklahoma City, "where requested" (R. 2326). This established in express form a restriction which otherwise might have been inferred from the excluded testimony. The master agreements with the other majors which

gave Griffith first run of their films in Plainview during this season did not, however, expressly grant such a subsequent run option in this town, although their tendency was to accomplish this result, since all contained special provisions inconsistent with the sale of such a run to Griffith's opposition in any town.

Columbia, Fox, Loew, and RKO all permitted Griffith to play out of order of release and required no minimum price to be charged for first run (Exs. C-4, R. 2126; F-3, R. 2206; L-4, R. 2250; RKO-44, R. 2423, 2430). The admitted testimony established the basic fact that Sealing could not license second run films from these distributors, that he requested R. E. Griffith to release such runs for his use, and that Griffith refused to do so (R. 229). The exclusion of Sealing's conversations with these distributors merely excluded an explicit affirmance of a conclusion compelled by the admitted evidence but which the court was apparently unwilling to draw.

2. *Correspondence and memoranda.*—The excluded correspondence between complainants and the major distributors was written evidence of the same nature as the excluded oral negotiations. Its weight might be regarded as greater since its contents were not dependent upon any act of recollection, but its relevance was precisely the same. The competence of the correspondence subpoenaed from the distributors was also

supported by the fact that it had been retained in their files as part of their business records. To the extent that it was written or received by persons who testified at the trial, it also had a cross-examination value, partially recognized by the court.

Plaintiff's Exhibit 120, the letter from Neil Agnew, general sales manager of Paramount, to Jake Jones, a Shawnee exhibitor, explaining why Paramount's first run films had been taken from Jones and given to Griffith, heretofore quoted at p. 60), was admitted on Agnew's cross-examination (R. 1915-16). However, *inter-office* correspondence written by such witnesses, which would qualify or impeach their testimony, was excluded. Thus, Kupper, sales manager of Fox, was permitted to testify that he made his decision as to whom to sell in Lubbock, Texas, without asking "anybody's opinion as to what we did" (R. 1373). Yet the following exchange of letters (Ex. F-19-CC, R. 2597; Ex. F-19-CC, 2598) between Kupper and his branch manager at Dallas was offered and excluded during his cross-examination (R. 1395, 1396):

OCTOBER 6, 1937.

Mr. W. J. KUPPER,
New York City.

DEAR MR. KUPPER: I believe it was your suggestion that in the event we got together with R. E. Griffith for his circuit, we would sell subsequent run contracts in Lubbock.

I anticipate leaving here next Tuesday or Wednesday and make a trip thru Northwest Texas, at which time, I am going to contact Mr. Mauldin and endeavor to secure the proper deal, based on the admission prices charged in his theatres.

It is my understanding that Mauldin does charge 25¢ and he has also given me to understand that he is willing to follow a Griffith second run on some of the pictures, for which Griffith is now charging 20¢.

Unless I hear from you to the contrary, I will make this trip and forward contracts to you thru the regular channel.

Kindest regards.

Yours very truly,

/s/ H. R. BEIERSDORF.

OCTOBER 7, 1937.

Mr. H. R. BEIERSDORF,

Dallas, Texas.

DEAR MR. BEIERSDORF: Regarding your letter of October 6th relative to selling subsequent runs in Lubbock, see no reason why you cannot sell Mr. Mauldin's theatre, provided he charges a respectable admission price.

Griffith was up here and complained bitterly about some account you are supposed to be selling out at the College in Lubbock who charges a very cheap admission price, runs double bills, etc.

If this is the same account that you are referring to here, we don't want it. How-

ever, if you can get a satisfactory contract with the proper set-up as to playing time, etc. it will be all right.

Very truly yours,

/s/ W. J. KUPFER (Italics ours).

In addition to business correspondence or memoranda signed by a witness, similar writings by other representatives of his company which tended to rebut his testimony, were excluded. Thus, Rodgers, general sales manager of Loew, and the only witness called for that distributor, testified that he knew of no agreement with the appellees not to licence a second or subsequent run to any of their competitors (R. 1560). He admittedly had had no direct contact with the negotiation or operation of any license agreement with the appellees (R. 1561). His southern district manager, Kessnich, and Oklahoma City manager, Zoellner, who did have such contact (R. 1561), had expressed themselves in the following manner in memoranda kept in the files of this distribution, all of which were offered (R. 1069) and excluded (R. 1084).

Zoellner, Loew's Oklahoma City manager, wrote to Connors, his superior at New York, on May 13, 1935 (Ex. L-109, R. 2629):

You will recall that some six years ago in our discussion with E. A. Griffith we agreed not to sell second run in any of the Griffith towns having a population of less than 10,000 people. Naturally Griffith will

not like it when we sell our product second run in this or any other town, but on the other hand they should not have any objection, because the theatre will be operated on a strictly 15¢ minimum adult admission price, while Griffith charges 25¢ in the A houses and 15¢ in the B house.

Kessnich, Loew's southern district manager, wrote to Connors at New York, on May 16, 1935, re Zoellner's letter (Ex. L-110, R. 2630):

I don't see any reason why we shouldn't sell Mr. Jones our product, second run, except that we did have an arrangement with Griffith whereby we did not sell this type of operation since we felt it affected our first run returns, which returns come to us through our straight percentage arrangement.

Zoellner wrote to Connors on March 17, 1936 (Ex. L-114A, R. 2631):

The reason we have not sold second run against Griffith in the past was because they quite rightfully claimed that a second run naturally hurts the first run theatre. However after Griffith themselves have used our product second run in a town like Chickasha, or Shawnee, or Enid, Oklahoma, I do not see how a third run could hurt them—especially when the theatre is willing to charge the same admission as they themselves charge second run for our pictures third run.

Zoellner wrote to Connors on August 12, 1935 (Ex. L-54, R. 2626):

A new theatre recently opened in Enid, Oklahoma, the "Gray" theatre. It is charging an admission of ten cents for children and fifteen cents for adults, matinee and night, does not use double programs—in other words, on a legitimate basis. The exhibitor, Mr. Gray, desires to buy all the third run product we are willing to sell him, including shorts. However, Griffith Brothers have taken the attitude that inasmuch as there was no previous third run in Enid we should not sell our product third run against them.

As you know, Griffith have been using our product first and second run in Enid—the second run contract being on a flat rental basis. In selling third run after the completion of Griffith's second run, Griffith cannot claim this would hurt our first run because they, themselves, are using our pictures second run at ten and fifteen cents admission and, if anything hurts our first run, it would be the second run.

Zoellner wrote to Connors on August 3, 1937 (Ex. L-68, R. 2627):

The writer has always maintained that we should sell our product third run to Mr. Gray, who is running a very nice theatre, is willing to pay a fair price for our product and charges the same admission that Griffith is charging second run. I shall not

approach Mr. Gray however until you have made a deal with Griffith for the 1937-38 product.

In this connection, there are two other towns of considerable size in this territory where we should sell our product third run—one is Chickasha, Oklahoma, where Southwestern Theatres (Moran and Isley), who are buying our product 100% in their four Tulsa houses, Ficher, Oklahoma, and Missouri out of the Kansas City office, are operating the Midwest and Ismo theaters. These people are not a fly-by-night outfit and it is very hard to explain why we refuse to sell them our product third run after Griffith uses it second run, when they are willing to charge the same admission prices third run that Griffith is charging second run for our product.

Another town is Ada, Oklahoma, where Mrs. Kyser is operating a very beautiful modern theatre. Ada in the last two years has had a tremendous oil boom and the town today must have a population of 30,000 and we should sell our product third run in this situation—especially, as in the case of Enid and Chickasha, this exhibitor is also willing to charge the same admission prices third run as Griffith is charging second run for our product.

Zoellner wrote to Connors on February 21, 1939 (Ex. L-91, R. 2628):

Mr. G. S. Pinnell, operating the New Bays theatre in Blackwell, Oklahoma,

called on the writer and wanted to buy our product second run in Blackwell, Oklahoma. He wants to charge ten cents for children and fifteen cents for adults.

We are selling all our first-run product to the Griffith Amusement Company and we have never sold second-run product in this town of 9,500 population.

Griffith contends that if we sell our product second run in Blackwell it will hurt his first-run business.

Similarly, McCarthy, Southern and Canadian sales manager of Universal (R. 1537), the sole witness called for that distributor, was permitted to testify that there was no agreement by Universal with the appellees that Universal would not license second run to competitors of the appellees during the period 1933-34 up to 1945 (R. 1545), while the following letter from Olsmith, Universal's manager at Dallas (R. 1547), to its Oklahoma City manager, dated November 5, 1936 (Ex. U-39, R. 2669), was excluded (R. 1099, 1100):

Replying to your letter of November 3, I was afraid you were going to have some difficulties with Falls over the second run setup in Norman as it was not in line with our agreement.

The understanding with reference to the sale of second run Universal product is that we are not to sell second run pictures in any town where they themselves do not

operate a second-run theatre; their contention being that if the town is capable of supporting a second run theatre they will put it in themselves.

There may be one or two situations where they are probably wrong in their contentions; however, I am sure you will agree with me without any question that most of their towns could hardly justify a second run theatre and at the same time allow us to take out first run revenue.

Correspondence between the major distributors and exhibitors competing with Griffith such as that between Fox and Jones threatening to cancel Jones' bookings at Shawnee as a result of Griffith's complaints about his admission prices (Exs. 270-272, R. 2585-87), while Griffith played Fox pictures on a prior run at lower admission prices (R. 536-38), and between Universal and Vincent (R. 503) explaining that a booking in his theatre at Hominy must be canceled because Griffith had bought the picture for its circuit (Ex. 265, R. 2581) and then reconfirming his date by permission of Horace Falls (Ex. 266, R. 2582), are other examples of excluded evidence which tended to rebut assertions by the appellees' witnesses which were accepted by the court.

Other excluded competent evidence directly contradicted the court's findings of fact. The court found that the appellees did not condition

the licensing of films in any competitive situation upon the licensing of such films in any other situation (R. 123), yet excluded (R. 1069, 1070) exhibit RKO-21E (R. 2640), a telegram from RKO's branch sales executive to the home office stating, "As part of circuit deal it was necessary to include Hobart Griffith franchise. * * *". The franchise is exhibit RKO-44, and Hobart is the town where Mahone had been playing RKO on first run in opposition to Griffith. Examination of the franchise itself, coupled with Mahone's testimony that he was given no opportunity to negotiate for the continuance of his run (R. 988) should have compelled the conclusion expressly stated in this telegram in any event, and the exclusion of this evidence was in that sense merely a cumulative error. Its exclusion was, however, a striking example of the court's refusal to relate the agreements in evidence between the appellees and the major film distributors to the admitted evidence of the independents' inability to negotiate on a competitive basis, even where the relationship was made explicit in the distributors' own business records.

The court also found that there was no agreement between the defendants and any distributors which unreasonably prevented, restricted, or restrained the licensing of feature pictures which were not used by the defendants (R. 126), yet excluded (R. 1069-70) exhibit L-123 (R. 2634),

an inter-office letter from the Loew office manager, dated May 29, 1938, stating:

The second run features for the Griffith Amusement Company are set-up on our records as "No Charge"—the film rental for same being included in the price for first run. At the present time we have approximately fifty (50) features under contract second run which Griffith advises they will not use.

We have repeatedly asked them that if they do not intend to use them to please give us a letter to that effect. They will not consent to give us a letter because they do not want the pictures cancelled from their contract, knowing that it would give us the right to sell some of them second run to their opposition.

There is no way for us to clear our records of these features or for the Booker to receive credit for them in the Bookers' Standings unless it would be permissible for us to put through "No Charge B. N. U." Billings.

Will you please let us know whether or not this would be permissible?

The excluded evidence on this point was merely cumulative, since the court had admitted (R. 1806-1810) exhibits RKO-17, 18, 19, and 20 (R. 2394-2414), an exchange of correspondence between RKO and Griffith from which it appeared that this distributor could not secure from Griffith the privilege of licensing films un-

used by the circuit but covered by its franchise, to other exhibitors until the films in question were from one to two years old. The court apparently concluded that this course of conduct was reasonable because under a construction of the franchise argued by the appellees' counsel (R. 1812-14) the distributor might have forced the release of these features at an earlier date. The fact that the parties themselves construed it differently in actual operation was disregarded. The excluded Loew exhibit would apparently also have had no effect on the trial court's conclusions, since it merely recorded the actual course of dealings under the Loew master agreement (Ex. L-6, R. 2264-5). Its exclusion is only a further example of the court's rejection of proven unreasonable competitive effects of the appellees' agreements with the major distributors, in favor of the appellees' testimonial protestations that such results were unintended, in determining their legality.

SPECIFICATION OF ERRORS TO BE URGED

The District Court erred:

1. In failing to hold that each of the master agreements made between the appellees and the major film distributors was a violation of section 1 of the Sherman Act on its face (Nos. 14 and 15, R. 131).
2. In failing to hold that the appellees were a combination in unreasonable restraint of trade,

which monopolized theatre operations in violation of Sections 1 and 2 of the Sherman Act (Nos. 1-13, R. 130-31; Nos. 16-23, R. 131-32).

3. In excluding competent oral and written evidence which tended to contradict the court's findings of fact (Nos. 23, 24, 26, and 27, R. 132).

SUMMARY OF ARGUMENT

I

The method of negotiation and the express terms of the master agreements and franchises by which the appellees licensed feature films from the major film distributors so restrained the ability of the appellees' competitors to procure films as to violate Section 1 of the Sherman Act. The mere fact that the appellees, by combining their film-buying power, were able to contract for the first run exhibition in their theatres of substantially all of a major film distributor's output of films for one or more seasons, precluded their independent competitors from licensing such films on a competitive basis. Furthermore, the unique provision in the master agreements authorizing appellees to play the licensed films out of order of release was on its face substantially effective in preventing the appellees' competitors from licensing the second run exhibition of the films covered by the agreements while such films were current entertainment.

The master agreements, their collective negotiation by the appellees to include the film re-

quirements of both competitive and non-competitive towns, the actual effect of the agreements upon the appellees' competitors, and their use to expand the circuit by absorption of such competitors, bring the case squarely within the rule of *United States v. Crescent Amusement Co.*, 323 U. S. 173. Upon the admitted and substantially undisputed evidence, the trial court should have entered judgment for the Government. The trial court excluded from evidence testimony of independent exhibitors as to their conversations with representatives of the distributors, and inter-office correspondence between officers and representatives of the distributors, which was clearly admissible under established rules of evidence, but the evidence which was received clearly establishes that the appellees violated the Sherman Act. Accordingly, judgment should be entered for the appellant without retrial of the issues in the light of the improperly excluded evidence.

II

The offenses here involved are so similar to those dealt with in *United States v. Crescent Amusement Co.*, 323 U. S. 173, and *United States v. Schine Chain Theatres, Inc.*, 63 F. Supp. 229 (W. D. N. Y.), that the relief granted in those cases should control the relief to be granted here. The appellees' film-buying combination should be dissolved and the negotiation of film licensing agreements such as were employed by the appel-

lees should be enjoined. Also, as in those cases, an effective decree should include a provision for the divestiture of a sufficient number of theatres or stock interests to restore theatre operating competition in the areas now controlled by the appellees and contain a similar prohibition against further acquisitions by the appellees. While the precise extent and nature of such relief may well be left to the trial court's discretion, the necessity for such relief has been demonstrated by the record now before this Court and its mandate should so state, in order to assure the entry of an adequate judgment.

ARGUMENT

I

THE COURT'S FINDINGS AND UNDISPUTED EVIDENCE ESTABLISH THAT THE APPELLEES VIOLATED THE SHERMAN ACT

The complaint in this case is substantially the same as the complaints in *United States v. Crescent Amusement Co.*, 323 U. S. 173, and *United States v. Schine Chain Theatres, Inc.*, 63 F. Supp. 229 (W. D. N. Y.). Each charges a group of affiliated motion picture exhibitors with restraining trade in motion pictures by combining their theatres into a single unit for the purpose of obtaining film licenses from the major film distributors. In each case, the defendants are charged with conspiring with each other and with

each of the eight major distributors unreasonably to restrain the film licensing opportunities of their independent competitors, that is to say, persons operating theatres in opposition to members of the combination. In each case, they are also charged with conspiring in the same way to monopolize the motion picture business in the areas in which the defendants and their affiliates operate theatres. The charges and the evidence in all three of these cases involve the same distributors and the effect upon their distribution practices of what is called circuit buying power, a shorthand description of the power over the film supply which results from combining into a single buying unit, called a circuit, a large number of theatres in so-called closed towns where there is no theatre-operating competition with a number of theatres in towns where there is such competition. The charges and the evidence in *United States v. Paramount Pictures, Inc.*, 66 F. Supp. 323 (S. D. N. Y.), also present the same problem, among many others, in terms of what relief may be had against the same major distributors to prevent unreasonable competitive restraints in the licensing of their films resulting from circuit buying power.

The principal difference between the record made in this case and in the *Schine* and *Crescent* cases is that, in the latter cases, exercise of circuit buying power had to be partially inferred from the circumstance of common control and similar

licensing practices of the various exhibitor corporations involved, while here the concerted action of the appellees and their theatre operating affiliates in licensing major films was conclusively established by the express agreements they made with the major distributors.

A. THE MASTER AGREEMENTS THEMSELVES RESULTED IN SERIOUS AND UNREASONABLE RESTRAINTS ON COMPETITION

During the motion picture seasons 1934-35 through 1937-38, the appellees' film deals with the major distributors were negotiated on behalf of all four corporate appellees and other exhibition companies in which they had a financial interest by R. E. Griffith, assisted by Horace Falls, a film buyer and booker employed by the Oklahoma appellees (R. 2310-12, 2329, 2434-6, 2469, 2472, 2485, 2526-7, 2531-2, 2538-9, 2544-5, 2660). In each season where a deal was made with any distributor it involved all of the appellees. The so-called master agreements with these distributors, which reduced these deals to written form, were generally executed by R. E. Griffith on behalf of each of the four corporate appellees and the other affiliated corporations composing the circuit when these deals were made. There is no dispute about the fact that all of these corporations acted in concert in either dealing or not dealing with the major distributors during this period (F. 9-10, R. 87). In the 1938-39 season and since, the Texas appellees have negotiated separately

from the Oklahoma appellees, but each of the agreements which the two groups respectively made for that year included the theatres of a substantial number of affiliated corporations. By that time, the original circuit had expanded to the point where splitting it in half still left each half almost as large or larger than the entire circuit had been at the beginning of the period (see fn. 17, at p. 23, *supra*).

These agreements, in form a letter or typewritten memorandum signed by R. E. Griffith on behalf of the exhibitors and with an acceptance noted by a sales representative of the distributor, generally covered all of the films to be released, that is to say, made available for exhibition, by the distributor during a one-year period following the making of the agreement. In some cases, franchises covering from three to five year periods were made, but these franchises were similar in substance to the one-year master agreements, except for the period of time covered. They all provided for the exhibition of the films licensed in all of the towns listed in a schedule accompanying the agreement upon first run, except in Oklahoma City, where the appellees operated only two subsequent run theatres." The agreements also generally provided for a second run of the same

²² The charges of the complaint were limited to the other towns in which the circuit operated, which were smaller communities with a population of about five to twenty-five thousand.

films or a lesser number to be selected from those played first run in certain specified towns. A blanket minimum annual film rental was fixed for the use of all of the films licensed in all of the towns named, on all runs used, which was payable in equal weekly or quarterly installments. The blanket rental was in most cases later allocated for bookkeeping purposes among the individual theatres and runs licensed, and individual license agreements for the individual towns covered were frequently later executed. But the rental obligation was an obligation of the circuit as a whole and the circuit was not committed to play any particular film on any particular run at any particular theatre on any specified date. In fact, most of these agreements expressly granted to the appellees the privilege of playing the films out of the order of their release by the distributor.

1. *The master agreements prevented the prompt exhibition by competitors of films not exhibited by appellees.*—The freedom of booking which these agreements gave the appellees was in sharp contrast to the standard printed form of agreement under which the distributors did business with the independent theatres operating in opposition to the circuit. The standard form provides for exhibition at a specific theatre on a specific run in the order in which the films are released by the distributor. The purpose of such an agreement, of course, is to insure that films licensed are ac-

tually played by the licensee or made available to others for playing as they are released, and that a following run may be licensed with some assurance that the films will be available to the subsequent run theatre in a predictable sequence. While the provisions of the standard form were expressly made a part of these master agreements by reference, the master agreements also expressly provided that wherever the master agreement was inconsistent with the standard form, the standard form provisions were superseded.

Some of the appellees' witnesses claimed that the provisions of the standard form were not in fact superseded by the master agreements and that the distributors had the right to compel the exhibitor to play the films in the order of release, notwithstanding express provisions to the contrary in the master agreement. There was no claim, however, that in actual practice the appellees had been compelled to forego this extraordinary privilege of playing the films licensed when it suited their convenience rather than in the order of release, as their competitors were compelled to play them. In fact, there was undisputed evidence that in actual operation the appellees had refused to release, for playing by other exhibitors, films covered by their licenses which they had not used, while those films were current entertainment; and that the major distributors did not in fact exercise the privilege which some of their executives asserted they had of compelling Griffith to

play or release films which were unused during the season in which they were released. The result was that independent competitors of the circuit had no opportunity to license for exhibition in their theatres even the films released by these distributors which the appellees did not exhibit until long after those films had become stale attractions.

2. *The master agreements prevented the subsequent exhibition by competitors of films exhibited by the appellees on prior runs.*—Another unreasonable effect of these master agreements was to prevent the exhibition of films which the circuit theatres played on prior runs by competitors who sought to play them on a following run. The failure of the master agreements to require the appellees to play films in the order of release, of course, itself tends to prevent the licensing of a subsequent run to a competing theatre, since the distributor could never give the subsequent run theatre assurance as to when the licensed film would be available to him, control over the time of first run exhibition having been completely surrendered to Griffith. But another provision of these agreements which more directly and completely prevented the licensing of a second run to the opposition was the optional second run privileges which were contained in the master agreements. In many of the agreements, the circuit contracted for a second run privilege, the run to be furnished without any additional rental charge. This in actual effect meant that Griffith could and did

effectively tie up the second run privilege in particular communities where competitors sought such a run without itself using a second run or paying for it.

These second run provisions were similar to the second run options granted by the same distributors to the Crescent circuit and condemned by this Court in *United States v. Crescent Amusement Co.*, *supra*, at p. 183, with the difference that the Crescent option required the Crescent defendants to pay a film rental for the additional runs they used, whereas the playing of a second run by Griffith involved no additional rental liability whatsoever. One of these options, that contained in the Paramount franchise, was modified after complaints to the Department of Justice by exhibitors who were unable to license a second run against Griffith, but the modification still required no rental payment by Griffith, although it did in terms require the release of unused films by Griffith within 60 days after they were made available. The release provision applied only to second run films.²⁶

²⁶ None of these master agreements prior to the 1938-39 season, with the exception just noted, contained any provision requiring Griffith to play or release, as the films became available, the films licensed to them on any run. Such a release provision was, of course, essential to any competitive distribution of films as between the circuit theatres and theatres attempting to compete with them. R. E. Griffith, who had conducted the negotiations for all defendants in prior seasons, in negotiating with Universal on behalf of the Texas defendants for the 1938-39 season, flatly declined to

3. *The joint negotiation of the master agreements prevented any competition between a circuit theatre and an opposition theatre for the privilege of exhibiting a specific film on a specific run.*—The foregoing unreasonable effects of the terms of the master agreements themselves are apparent on their face, as well as in the context of their actual effect upon competitors. They prevented, by their express terms, a normal competitive disposition of both the films the circuit did use and those it did not use. However, the basically unreasonable character of these agreements lies in the fact that their method of negotiation gave no opportunity for any comparison or consideration of competitive offers by a particular independent theatre for any particular run at any time. Witnesses called by the appellees conceded that in making these deals, the over-all revenue obtainable from the circuit was decisive, so that even where an independent in a particular town had actually paid and was willing to continue to pay more money for a distributor's product for exhibition in that town on first run than Griffith was willing to pay in that situation, the product was taken away from the independent and licensed to Griffith (R. 1504, 1546).

agree even to such a 60-day provision, although the Oklahoma defendants yielded this point in their negotiations that year with that distributor (R. 1552). The standard form provides that the exhibitor must designate a playing date for the films licensed within 14 days of availability (App. B, par. Sixth).

This inequitable competitive result was implicit in the very nature of the master agreements themselves and was recognized as such in the *Paramount* case. There agreements of the same character made with other circuits were introduced in evidence to show the characteristic methods by which the distributor-defendants licensed films to large circuits. The expediting court there expressly held that circuit deals of this kind, which on their face gave no opportunity for the matching of competitive offers by theatres in opposition to the circuit against offers made by individual circuit theatres, were in themselves an unreasonable restraint of trade. It held that the franchises were unreasonable restraints since they committed a distributor's films to the circuit for an unreasonable length of time, but its decision stands for the further proposition that licensing even one film for exhibition in a circuit theatre as part of a circuit deal is also unreasonable since the commitment is the result of blanket terms negotiated for an entire circuit with no consideration whatsoever being given to the claims of competing theatres on their individual merits. In that case, this holding was based simply upon a consideration of the terms of such agreements themselves. *United States v. Paramount Pictures, Inc.*, 66 F. Supp. 323, 346-7 (S. D. N. Y.). In the instant case, as in the *Schine* and *Crescent* cases, extensive evidence was offered and received showing what the actual com-

petitive effects of this method of licensing were in specific local situations. Thus the conclusion that the expediting court drew from the fact of the master agreements in the *Paramount* case was buttressed here by proof that the agreements in operation had exactly the unreasonable effects on competition which might otherwise be predicted from a careful consideration of their terms and method of negotiation.

B. THE FACTS FOUND BY THE TRIAL COURT AND UNDISPUTED EVIDENCE UNNOTICED IN ITS FINDINGS CONCLUSIVELY ESTABLISHED VIOLATIONS OF THE SHERMAN ACT CONDEMNED BY THE CRESCENT CASE

There is no serious dispute as to what actually happened to appellees' competitors in the specific situations as to which evidence was offered, except as to the substance of certain conversations between representatives of the appellees and complaining witnesses involving verbal threats. In many cases, the court did not attempt to resolve these conflicts in express terms, but simply recited the evidence establishing such a conflict and added its invariable conclusion that there was no evidence relating to the competitive situation in question which could justify a finding of any form of antitrust violation. This form of finding followed from the trial court's refusal to view the evidence as a whole in determining the appellees' liability. The Government had not charged that the events occurring

in any local situation constituted, by themselves, an unreasonable restraint of trade; but there was charged and proved collective action in unreasonable restraint of trade throughout the area in which the appellees and the interests affiliated with them operated theatres, and that they had effectively monopolized the motion picture business in numerous towns.²⁷

The fact that representatives of the appellees approached competitors about selling their theatres at a time when the latter were faced with difficulties in licensing films caused by the master agreements which the members of the Griffith circuit had collectively negotiated with the major film distributors is undisputed; equally undisputed is the fact that a number of independent exhibitors sold their theatres to the circuit after

²⁷ Some of the towns in which the defendants actually succeeded in monopolizing the entire motion picture theatre business in a town by acquiring a competitors' theatres are Altus (p. 36), Blackwell (p. 38), Brady (p. 39), Phillips (p. 44), Plainview (p. 46), Hominy (p. 51), and Mangum (p. 53). Others in which the defendants actually monopolized the major film product on first and second run, although independent opposition continued to exist, largely with inferior product, are Ada (p. 34), Duncan (p. 41), Lubbock (p. 43), Stillwater (p. 47), Norman (p. 54), Seminole (p. 57), and Shawnee (p. 58). In Gallup (p. 49), Hobart (p. 50), and Sapulpa (p. 56), where the independents were all established with superior theatres before Griffith acquired an interest in the town, the independents lost only one or two major companies to Griffith, but in each of these towns Griffith was able to control the major share of the major product.

experiencing such difficulties, and further agreed not to compete in the future. The fact that such agreements were not taken for the customary purpose of protecting the goodwill of the acquired theatres is conclusively established by the sweeping terms of the agreements made in the Brady, Plainview and Shawnee situations (*supra*, pp. 39, 46, 61-2). Regardless of whether the appellees or their representatives added the threatening language attributed to them by numerous complaining witnesses, these invitations to sell out were an aggressive step, frequently successful, toward securing complete control of the towns in question. In some cases, instead of purchasing a theatre outright and disposing of the operator's future potential competition by an express agreement not to compete, the appellees accomplished the same result by acquiring a partial interest in the competitor's theatre under an arrangement whereby they took over the film buying and the local partner continued to operate the theatre, with the profits split between them and a percentage of the gross paid to the appellees in compensation for their film buying and other administrative services. In either case, the elimination of competition in licensing films and operating theatres in the towns in question was complete.

The decision of the trial court in this case as to the validity of the appellees' franchises and

master agreements, their effect upon competition, and their use, as an instrument for monopolization, was not based upon any critical analysis of the prior opinions, either of this Court in *United States v. Crescent Amusement Co.*, *supra*, or of other federal courts in the *Schine* and *Paramount* cases, all of which dealt with substantially the same evidence, but reached an opposite result. The decision here was reached only by ignoring applicable legal precedents as well as the terms of the agreements which the court pronounced valid. The trial court, perhaps because it failed to analyze the character of the master agreements, refused to recognize the restraining effects on competition of the appellees' collective activity considered as a whole. Instead, the trial court substituted as the decisive consideration the appellees' asserted lack of intent to injure or destroy their competitors.

As in *Crescent*, we are told "that the independents were eliminated by the normal processes of competition; that their theatres were less attractive; that their service was inferior; that they were not as efficient business men as the defendants." But, as this Court replied in the *Crescent* case (at p. 183):

* * * the vice of this undertaking was the combination of several exhibitors in a plan of concerted action. They had unity of purpose and unity of action. They pooled their buying power for a common

end. It will not do to analogize this to a case where purchasing power is pooled so that the buyers may obtain more favorable terms. The plan here was to crush competition and to build a circuit for the exhibitors.

In citing the above language in its opinion, the trial court underlined the phrase "where purchasing power is pooled so that the buyers may obtain more favorable terms" (R. 78), indicating that in its view the instant case was such a case. The trial court then says, with respect to the conclusion in the *Crescent* opinion that the plan there "was to crush competition and to build a circuit for the exhibitors," that "although the charge is similar to the charge in the instant case, the proof is not. In the case at bar there is no testimony by any witness to that effect, but the testimony is to the contrary" (R. 78).

The District Court evidently thought that proof of a plan to crush competition and build a circuit had to be made by express testimony to that effect and that if the appellees' witnesses denied any such plan or purpose, that was conclusive in the absence of contrary statements by other witnesses. Of course, the appellees' intention, not only to obtain more favorable terms for themselves but to expand their circuit at the expense of independent competitors was not proved in the *Schine* or *Crescent* cases, or in this case, by explicit testimony of witnesses that this was the

plan and purpose of the combination. The proof of such intention was made there and here, and as it necessarily is in most antitrust cases, by showing what the appellees did and what the necessary effects of that conduct proved to be.

There was no dispute about the fact that the appellees consciously made these master agreements with the major film distributors which unreasonably restricted their competitors in obtaining major films, which in turn frequently led to the acquisition by them of the competitor's theatre or a financial interest in it, and that by such acquisitions they eliminated all theatre-operating competition in a substantial number of towns. The close interrelationship between this expansion of the circuit by elimination of competitors and the making of these agreements was primarily a matter for judicial observation rather than oral testimony. It would seem obvious that the more widespread the coverage of these master agreements became, the less chance competitors would have to survive, and that a progressive elimination of competing theatres would automatically intensify the circuit's buying power. The making of the agreements and the elimination of the circuit's competition were thus inseparable in any realistic view of the appellees' business.

In this case, as in the *Schine* and *Crescent* cases, the defendants' witnesses were permitted

to testify that they did not intend to produce the adverse competitive effects which occurred but were only interested in promoting their own business in a normal fashion, and that they never coerced or threatened anyone, etc. However, that kind of testimony was not thought by those courts to override evidence as to what actually occurred with respect to restraint or nonrestraint of competition, in appraising the intent of defendants for Sherman Act purposes. The failure of the district court to reach the same result here as the district courts reached in *Crescent*, *Schine*, and *Paramount* and which this Court reached in the *Crescent* case, was simply a refusal to accept the basic Sherman Act premise that antitrust defendants are conclusively regarded as intending to produce the effects on competition which are a necessary consequence of what they consciously do. *United States v. Patten*, 226 U. S. 525, 543.

The trial court's rulings on the admissibility of evidence which we have also assigned as error merely illustrate its refusal to appraise the appellees' intentions in terms of actual conduct during the period under review, rather than protestations at the trial that they did not intend by such conduct to work competitive injury. For example, the court excluded (R. 1069-70) an office memorandum taken from the files of the distributor Loew, which states that Loew is unable to license to other exhibitors 50 second run features which the circuit was not going to use because

Griffith would not release them (Ex. L-123, R. 2634). The trial court relied for its findings of no unreasonable restraint upon testimony of Loew's general sales manager Rodgers that there was no agreement between Loew and the defendants to restrict the terms of its dealings with competitors of Griffith (F. 30, R. 127). This testimony was admitted and relied on notwithstanding that Rodgers had never negotiated a deal with the appellees or had anything to do with the performance of the agreements his company made with the appellees (R. 1561). The court also excluded memoranda kept in the Loew files and written by the Loew executives who did negotiate and supervise these agreements, to the effect that Loew had actually refused to license runs following Griffith to its competitors as the result of agreements made with the appellees not to do so (*supra*, pp. 69-73).

While it is true that the grounds on which these exhibits were excluded was not lack of relevance but alleged incompetence because they were hearsay statements made outside the presence of the appellees, the rejection of such evidence in favor of pure opinion testimony by an interested witness, who did not even have the requisite experience or connection with the matter at issue to express an opinion of any probative value, does suggest a flat refusal to give objective evidence of actual conduct the weight which it is entitled to receive in Sherman Act cases.

The trial court's rejection of evidence of this kind was, of course, error in itself, since it plainly came within the business records exception to the hearsay rule and was of the same class of material that is customarily admitted under the Federal statute expressly liberalizing the business records exception. *Cornes v. United States*, 119 F. 2d 127, 129 (C. C. A. 9); *Harper v. United States*, 143 F. 2d 795, 805 (C. C. A. 8); *United States v. General Motors Corp.*, 121 F. 2d 376, 409 (C. C. A. 7), certiorari denied, 314 U. S. 618. It was also admissible under the exception for statements of motive and purpose, since it related directly to the distributors' reasons for refusing to license films to the appellees' competitors. *Lawlor v. Loewe*, 235 U. S. 522, 536; *Greater New York Live Poultry C. of C. v. United States*, 47 F. 2d 156 (C. C. A. 2); *Johnson v. J. H. Yost Lumber Co.*, 117 F. 2d 53, 60 (C. C. A. 8); *American Cooperative Serum Ass'n v. Anchor Serum Co.*, 153 F. 2d, 907, 912 (C. C. A. 7). It should have been admitted, even if the court's finding of no illegal combination between the exhibitors and the major distributors were accepted as correct. The court's failure to admit it under the coconspiracy rule (*Hitchman Coal & Coke Co. v. Mitchell*, 245 U. S. 229) was, of course, simply another consequence of its failure to find a conspiracy. It followed from the court's refusal to consider the restrictions imposed by the express agreements made with the major distribu-

tors because the appellees' witnesses testified there was no agreement to impose such restrictions.

However, the court's errors in excluding evidence do not require a retrial of the case, since the rejected evidence merely tended to confirm conclusions which must necessarily be drawn from the admitted evidence. The express agreements which the appellees made, plus the court's own findings and undisputed testimony as to what occurred in specific competitive situations covered by the agreements, compel a finding of liability in any event.

Under similar circumstances in *United States v. Crescent Amusement Company, supra*, this Court found it unnecessary to decide whether or not the evidence established a conspiracy between the major distributors and the exhibitor-defendants there involved. Evidence of conversations and correspondence between complaining independents and the major film distributors, in proof of the unreasonable effects of the defendants' use of their film buying power, was admitted and was relied upon both in the district court and in this Court. On appeal, the *Crescent* defendants contended that inter-office memoranda taken from the major distributors' files "stating reasons why the distributor was discriminating against an independent in favor of the defendants," had been improperly admitted, but this Court found it unnecessary to pass upon the claim by the United

States that these documents were admissible as declarations of coconspirators. It said (p. 184):

The other evidence established the position of the distributors and their relations to the theatres involved, what the distributors in fact did, the combination of the defendants, the character and extent of their buying power, and how it was in fact used. This other evidence was sufficient to establish the restraints of trade and monopolistic practices; the purpose, character, and extent of the combination are inferable from it alone.

In the present case, likewise, the excluded evidence might be regarded as mere surplusage since the admitted evidence was sufficient to establish liability. The exclusion of this evidence becomes significant only because the court in its findings accepted the exculpatory statements of appellees' witnesses without subjecting them to the test of comparison with their own contemporaneous records. The sharp contrast between the factual statements made by employees of the major film distributors, which the court excluded, and the testimony of their superiors, which the court admitted and made the basis for its determination of the ultimate issues before it (R. 1560, 1545, 1496, 1524, 1534), alone deprives the trial court's ultimate conclusions of the weight which they would otherwise have. But the basic error

of the trial court lies in its rejection of the substantive doctrine of the *Crescent* case. We respectfully submit that the application of that doctrine to the undisputed admitted evidence requires the entry of a judgment in favor of the Government in this case.

II

THIS COURT SHOULD DIRECT THE ENTRY OF A DECREE WHICH WILL BE EFFECTIVE TO RESTORE COMPETITION

We have shown that, upon the basis of the admitted evidence, the appellant is entitled to a decree adjudging the appellees guilty of violating the Sherman Act. Since the case is ripe for the entry of an appropriate decree, a retrial for the purpose of receiving evidence improperly excluded would be an unnecessary burden. Furthermore, the offenses of the present appellees are so similar to those of the defendants in the *Crescent* and *Schine* cases that a serious injustice would be done if the appellees in this case are not subjected to a decree comparable in scope to those imposed upon the *Crescent* and *Schine* defendants.

Injunctive relief is obviously necessary to prevent the appellees from continuing to combine and use their film-buying power to license films in the manner and with the effect revealed in this case. Toward this end, nothing less than the injunctive relief approved by this Court in the

Crescent case will be effective. *United States v. Crescent Amusement Co.*, *supra*, p. 187. Mere injunctive relief, however, will do nothing to restore the competitive conditions which the appellees have destroyed. Thus, the most significant relief which can be granted in the instant case is divestiture of theatres and theatre interests and a curb on future acquisition of theatres and theatre interests, such as was ordered in the *Crescent* and *Schine* situations, sufficient to restore competition in the areas now monopolized by the appellees. Accordingly, we urge that the mandate to the trial court contain an express instruction²⁸ to enter a decree granting relief comparable to that already approved by this Court in the *Crescent* case and to the relief which this Court may find appropriate in the *Schine* case.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be reversed and the case remanded to the district court, with directions to enter a decree which will not only grant injunctive relief adequate to end the appellees' illegal combination, but will provide affirmatively for the revival of competition

²⁸ *United States v. St. Louis Terminal*, 224 U. S. 383, 411-412, is illustrative of the specific instructions as to the content of a decree which this Court has given upon reversal in appropriate cases.

in the exhibition of motion picture films in the areas involved.

Respectfully submitted.

✓ PHILIP B. PERLMAN,
Solicitor General.

JOHN F. SONNETT,
Assistant Attorney General.

✓ ROBERT L. WRIGHT,
✓ MILTON A. KALLIS,
✓ ROBERT W. GINNANE,

Special Assistants to the Attorney General.

DECEMBER 1947.

APPENDIX A

(Ex. C-5, R. 2143-46)

AGREEMENT made and entered into this 31st day of August, 1936, by and between COLUMBIA PICTURES CORPORATION, hereinafter called "Distributor" and CONSOLIDATED THEATRES, INC. and R. E. GRIFFITH THEATRES, INC. and GRIFFITH AMUSEMENT COMPANY, WESTEX THEATRES INC., and Associated companies and theatres, hereinafter known as the Exhibitor operating the following theatres in designated towns:

"Exhibit A"—designated towns

No. days	Town and State	Theatre	Run
GRIFFITH AMUSEMENT COMPANY			
1-3	Ada, Oklahoma.....	McSwain-Kiva-Ritz.....	1st & 2d.
1-4	Bartlesville, Oklahoma.....	Odson-Lyric-Rex-Liberty.....	1st & 2d.
1-3	Blackwell, Oklahoma.....	Palace-Midwest.....	1st.
1-3	Borger, Texas.....	Rix-Rex-Circle.....	1st & 2d.
1-3	Chandler, Oklahoma.....	H & S-Odson.....	1st.
1-3	Elk City, Oklahoma.....	Elk.....	1st.
1-4	Enid, Oklahoma.....	Artco-Criterion-Arcadia-Mecca.....	1st & 2d.
1-3	Guthrie, Oklahoma.....	Melba-State-Guthrie.....	1st.
1-3	Henryetta, Oklahoma.....	Morgan-Blaine.....	1st.
1-3	Hobart, Oklahoma.....	Klona.....	1st.
1-3	Hugo, Oklahoma.....	Erie-Ritz.....	1st.
1-3	Kermit, Texas.....	Kermit.....	1st.
1-3	Maud, Oklahoma.....	Arcadia.....	1st.
1-3	Norman, Oklahoma.....	Sooner-University.....	1st.
1-3	Oklahoma City, Oklahoma.....	Rialto.....	4th.
1-4	Okmulgee, Oklahoma.....	Orpheum-Yale-Rex.....	1st & 2d.
1-4	Pampa, Texas.....	LaNora-Rex-State.....	1st & 2d.
1-3	Seminole, Oklahoma.....	Rex-State-Rialto-Ritz.....	1st & 2d.
1-4	Shawnee, Oklahoma.....	Bison-Criterion-Avon.....	1st & 2d.
1-3	Stillwater, Oklahoma.....	Aggie-Mecca.....	1st.
1-3	Duncan, Oklahoma.....	Folly-Palace.....	1st.
1-3	Wellington, Texas.....	Ritz-Taran.....	1st.
1-3	Wink, Texas.....	Rix-Rex.....	1st.
R. E. GRIFFITH THEATRES, INC.			
1-3	Alamogordo, New Mexico.....	Alamogordo-Adobie.....	1st.
1-3	Carlsbad, New Mexico.....	Cactus-Cavern.....	1st.
1-3	Clovis, New Mexico.....	Lyceum-Mesa.....	1st.
1-3	Eunice, New Mexico.....	Lee.....	1st.
1-3	Gallup, New Mexico.....	Chief-Navajo.....	1st.
1-3	Hobbs, New Mexico.....	Reel-Rig.....	1st.
1-3	Jal, New Mexico.....	Rex.....	1st.
1-3	Roswell, New Mexico.....	Yucca-Princess-N. M. M. I.....	1st & 2d.

"Exhibit A"—designated towns—Continued

No. days	Town and State	Theatre	Run
CONSOLIDATED THEATRES, INC.			
1-3	Altus, Oklahoma	Empire-Rex-Paramount	1st.
1-3	Chickasha, Oklahoma	Washita-Rialto-Ritz	1st & 2d.
1-3	Claremore, Oklahoma	Yale-Palace	1st.
1-3	Cleburne, Texas	Yale-Palace	1st.
1-3	Clinton, Oklahoma	Del Rio-Rialto-Rex	1st.
1-3	Cushing, Oklahoma	Dunkin-Paramount-American	1st.
1-3	Holdenville, Oklahoma	Grand-Dixie-Liberty	1st.
1-4	Lubbock, Texas	Palace-Lindsey-Texas	1st.
1-3	Midland, Texas	Yucca-Ritz	1st.
1-3	Oklahoma City, Oklahoma	Reno (Sub)	5th run.
1-3	Okmulgee, Oklahoma	Yale-Empress	1st.
1-3	Payre, Oklahoma	Rio-New	1st.
1-3	Vinita, Oklahoma	Lyric-Astee	1st.
1-3	Drumright, Oklahoma	Ritz-Midwest	1st.
WESTEX THEATRES, INC.			
1-3	Ballinger, Texas	Texas-Palace	1st.
1-3	Belton, Texas	Baltorian-Beltex	1st.
1-3	Brady, Texas	Brady-Palace	1st.
1-3	Clarksville, Texas	State-Colonial	1st.
1-3	Deatur, Texas	Majestic-Ritz	1st.
1-3	Georgetown, Texas	Palace-Ritz	1st.
1-3	Hereford, Texas	Star	1st.
1-3	Lampasas, Texas	Le Roy-Le Roy, Jr.	1st.
1-3	Merkel, Texas	Queen	1st.
1-3	Odessa, Texas	Lyric-State	1st.
1-3	Olney, Texas	Westex-Olney-Princess	1st.
1-3	Plainview, Texas	Granada-Texas	1st.
1-3	Portales, New Mexico	Yam	1st.
1-3	Post, Texas	Garda	1st.
1-3	San Saba, Texas	Palace	1st.
1-3	Spur, Texas	Palace	1st.
1-3	Stamford, Texas	Grand-Ritz	1st.
1-3	Winters, Texas	Queen-Lyric	1st.
1-3	Luling, Texas	Princess	1st.
1-3	Quanah, Texas	Crystal	1st.
1-3	Lockhart, Texas	Baker	1st.
LOWENSTEIN THEATRES			
1-4	Ardmore, Okla.	Tivoli-Ritz-Paramount-Rex	1st & 2d.
WALMUR AMUSEMENT CO.			
1-3	Bristow, Okla.	Princess-Walmur	1st.
W. J. MOORE THEATRES			
1-3	Fairfax, Okla.	Tall Chief	1st.
GAINESVILLE THEATRES			
1-3	Gainesville, Texas	Majestic-Plaza-Texas	1st.
COLEMAN INTERESTS			
1-3	Miami, Oklahoma	Coleman-Glory B.	1st.
W. H. WILLIAMS INTEREST			
1-3	Tonkawa, Oklahoma	Ray-Rialto	1st.

It is understood and agreed that COLUMBIA PICTURES CORPORATION, the Distributor and the Exhibitor agrees as follows: That the output of

COLUMBIA pictures to be released during the season of 1936-37, shall be exhibited in the above named theatres and paid for under the following arrangements. (All Columbia product is excluded from Sapulpa, Oklahoma, except the eight Tim McCoy reissues and eight Fighting Ranger Westerns, and eight Peter B. Kyne Westerns.)

(a) The Exhibitor agrees to pay the Distributor as a minimum guarantee sixty-five thousand dollars for pictures to be played and paid for in the named theatres within the period from November 1st, 1936, to December 31st, 1937, on terms for theatres and towns and runs that will be broken down and allocated from the following list of groups of pictures, which stipulates the total price per picture in each group for the towns, runs and theatres designated in "Exhibit A":

- 2—Special Productions—allocated at \$5,000.00 each.
- 2—Specials—allocated at \$3,100.00 each—Columbia Specials.
- 6—Pictures—allocated at \$1,750.00 each—Columbia Product.
- 12—Pictures—allocated at \$1,400.00 each—Columbia Product.
- 20—Pictures—allocated at \$1,000.00 each—Columbia Product.
- 8—Pictures—allocated at \$1,175.00 each—Peter B. Kyne Pictures.
- 8—Pictures—allocated at \$1,050.00 each—Fighting Rangers Westerns.
- 8—Pictures—allocated at \$950.00 each—Tim McCoy re-issues.

SHORT SUBJECT PRODUCT

100 Single Reels—\$147.50 each.

26 Two-Reelers—\$299.50 each.

In the Rialto, Oklahoma City, the Distributor agrees to serve product fourteen (14) days following third run Standard Theatres.

In the Reno, Oklahoma City, the Distributor agrees to serve product seven (7) days following Rialto or Grand Avenue run.

(b) Preceding each town, the number of days is set out, being namely 1-3 in some towns and 1-4 in others. It is also understood that the Exhibitor has the privilege to preview all product in all towns.

(c) The Exhibitor is not obligated to play any foreign made pictures.

(d) The Exhibitor is not required to play pictures in the order in which they are released.

(e) IT IS UNDERSTOOD AND AGREED that the two Special Productions allocated at \$5,000.00 each must be CAPRA PRODUCTIONS and that all such CAPRA PRODUCTIONS delivered under this contract in addition to two other specials to be designated to play at \$3,100.00 each must play in each and every town with the exception of SAPULPA, OKLAHOMA.

It is also understood that the first Special Production subject to be delivered shall be "Lost Horizon".

(f) The Exhibitor is obligated to deliver to the Distributor, immediately after receiving approval of this contract, detailed allocations on all Columbia feature and short subject product enumerated in this agreement, as previously outlined.

(g) The Distributor agrees to serve the R. E. Griffith Theatres, Inc. located in Texas and New Mexico from the Dallas, Texas branch.

(h) It is further mutually agreed and understood that the Standard form of exhibition contract herewith attached is to become a part and parcel of this agreement and that the physical operation is to be governed by the terms of the attached Columbia form of exhibition contract, and in case of any conflict between this and said printed form, the provisions herein shall control.

(i) The Distributor and Exhibitor agree to jointly designate pictures for various groups, CAPRAS and WESTERNS excepted.

IN WITNESS WHEREOF the parties hereto have caused these presents to be duly executed this 31st day of August 1936.

COLUMBIA PICTURES CORPORATION

Approved, Columbia Pictures Corp. Sept. 1, 1936.

By /s/ RUBE JACKTER,

Asst. General Sales Manager.

GRIFFITH AMUSEMENT COMPANY &
CONSOLIDATED THEATRES, INC. &
R. E. GRIFFITH THEATRES, INC. &
WESTEX THEATRES INC. & ASSO-
CIATED THEATRES,

By /s/ R. E. GRIFFITH, *Authorized Agent.*

APPENDIX B

COLUMBIA—1936-37—PRINTED FORM

Form S-14-A

LICENSE AGREEMENT

Branch_____ Date_____ Contract No._____

Salesman Name_____ Exhibitor's Name_____

COLUMBIA PICTURES CORPORATION

AGREEMENT of license under copyright made in one or more counterparts between COLUMBIA PICTURES CORPORATION, a corporation (hereinafter referred to as the Distributor), party of the first part, and the Exhibitor (hereinafter named and referred to as the Exhibitor, operating the theatre hereinafter designated), party of the second part, as follows:

LICENSE

FIRST: The Distributor grants the Exhibitor and the Exhibitor accepts, a limited license under the respective copyrights of the motion pictures embraced in the Schedule hereof and under the copyright of any matter included in any sound recorded therewith, to exhibit publicly said motion pictures and to reproduce for public performances such recorded sound in synchronism therewith, but only at the said theatre for the num-

(100)

ber of consecutive days specified in the Schedule and for no other use or purpose; provided that the reproducing equipment in the said theatre will operate reliably and efficiently to reproduce such recorded sound with adequate volume and high quality; and provided further that if copyrighted musical compositions are included in such recorded sound, the Exhibitor will have at the date or dates of the exhibition of each such motion picture a license from the copyright proprietor thereof or from any licensee of such copyright proprietor to perform publicly the said copyrighted musical compositions. If more than one theatre is hereinafter designated the said motion pictures are licensed for exhibition at only one of such theatres unless otherwise in the Schedule specifically provided in writing.

TERM AND WARRANTY

SECOND: (a) The term of this Agreement shall begin with the date fixed or determined for the exhibition at the said theatre of the first motion picture deliverable hereunder and shall continue for a period of one year thereafter unless otherwise in the Schedule provided. The Distributor agrees during said term to deliver to the Exhibitor, and the Exhibitor agrees to exhibit at said theatre during said term upon the date or dates herein provided for, a positive print of each of said motion pictures. The Distributor warrants that each positive print will be in good physical condition for projection and exhibition, and will clearly reproduce the recorded sound in synchronism therewith if properly used upon standard reproducing equipment. If the recorded

sound is not recorded upon a print, all references herein to a print shall be deemed to include the records, discs, and any other device upon which sound may be recorded for reproduction with the exhibition of a print.

DAMAGES FAILURE TO DELIVER

(b) If the Distributor shall fail or refuse to deliver, or the Exhibitor shall fail or refuse to exhibit during the term hereof, any of said motion pictures, or if the Distributor shall wilfully violate any of the provisions of Clause Seventh hereof, the Exhibitor or the Distributor, as the case may be, shall pay the damage so caused and if such damage cannot be definitely computed shall pay as liquidated damages a sum equal to the fixed sum herein specified as the rental of each such motion picture or a sum computed as provided in Clause Third (c) hereof, if the rental of any such motion picture is to be determined, either in whole or in part upon a percentage of the admission receipts of said theatre or any part thereof or upon a percentage of such receipts and a fixed sum; provided that any claim by the Exhibitor with respect to the condition of a print shall be deemed to have been waived by the Exhibitor unless notice of such claim shall have been given by the Exhibitor to the Distributor's exchange from which the Exhibitor is served, by telephone or telegraph, or in person, immediately after the first public exhibition thereof by the Exhibitor and written confirmation thereof mailed by the Exhibitor upon the same day to the Distributor's said exchange.

PAYMENT

THIRD: (a) Exhibitor agrees to pay for such license as to each such motion picture the fixed sums specified in the Schedule at least three (3) days in advance of the date of delivery of a print thereof at the Distributor's exchange or of the date of shipment to the Exhibitor from another exhibitor, unless after the acceptance of this application by the Distributor such payment shall be otherwise agreed to by the Distributor in writing signed by an officer of the Distributor. All payments hereunder shall be made to the Distributor at the City in which is located the exchange from which the Exhibitor is served.

PERCENTAGE BOOKINGS

(b) If the rental of any of such motion pictures is to be determined either in whole or in part upon the admission receipts of said theatre or any part thereof, the Exhibitor agrees to pay such rental immediately after the last exhibition upon the last date of the exhibition of each such motion picture or if requested by the Distributor at the end of each day's exhibition. In each such case the Exhibitor shall deliver to the Distributor immediately after the last exhibition upon each date of exhibition of each such motion picture a correct itemized statement of the gross receipts of said theatre for admission thereto upon each such date. Such statement shall be signed by the Exhibitor or the Manager or Treasurer of said theatre and the Cashier thereof and shall include a statement of such facts and figures as may be provided in the Schedule to be furnished by the Ex-

hibitor, and if requested by the Distributor, shall be made upon forms furnished by the Distributor. Upon the exhibition date or dates of each motion picture an authorized representative of the Distributor is hereby given the right to verify the sale of all tickets of admission to said theatre, and the receipts therefrom; and for such purpose shall have access to the theatre, including the box office, and also the right to examine all relevant entries relating to such gross receipts in all the Exhibitor's books and records, and if hereunder it is provided that the Exhibitor makes certain expenditures and/or deductions, to examine all entries relating to such expenditures and/or deductions. Such right of access and examination of the Exhibitor's books and records limited as aforesaid, shall continue for a period of four (4) months after the receipt by the Distributor of each such statement. The Distributor agrees, unless such representative is in the continuous employ of the Distributor or employed as a checker, not to employ as a representative for such purposes any person a resident of or employed in the place where the said theatre is located, other than a person engaged in business as an accountant.

LIQUIDATED DAMAGES—PERCENTAGE BOOKINGS

(c) If the Exhibitor fails or refuses to exhibit any of said motion pictures as herein provided and the rental or any part thereof is to be computed in whole or in part upon a percentage of the admission receipts of said theatre, the Exhibitor shall pay the Distributor as liquidated damages for each day the Exhibitor fails or re-

fuses to exhibit such motion pictures, in addition to any fixed sums payable hereunder in respect of such motion picture, a sum equal to such percentage of the average daily gross receipts of such theatre on each date any feature motion picture distributed by the Distributor was exhibited thereat during the period of ninety (90) days prior to the date or dates when said motion picture should have been so exhibited hereunder, or if no feature motion picture distributed by the Distributor was exhibited at such theatre during said ninety day period, then a sum equal to such percentage of the average daily gross receipts of such theatre during the period of thirty operating days immediately prior to the date or dates when such motion pictures should have been exhibited, or prior to the date of such failure or refusal to exhibit any of said motion pictures; provided that if the Exhibitor shall exhibit such motion pictures for less than the full number of days provided for in the Schedule, for each day less than said full number of days, the sum equal to such percentage shall be computed upon a sum equal to sixty-five (65%) per cent of the gross receipts of said theatre during the last day of the exhibition thereat of such motion picture. A sworn statement of the said daily gross receipts shall be delivered by the Exhibitor to the Distributor upon demand therefor.

(d) If the rental of any such motion pictures is to be determined upon the admission receipts but with a minimum guaranteed rental, then the Exhibitor agrees to pay such minimum guaranteed rental in accordance with the provision of

Subdivision (a) hereof. Any additional monies to be paid to Distributor as a percentage of the admission receipts shall be paid by the Exhibitor to Distributor in accordance with Sub-division (b) hereof.

DELIVERY AND RETURN OF PRINTS

FOURTH: (a) After each of said motion pictures is generally released for public exhibition and becomes available for exhibition hereunder by the Exhibitor, the Distributor agrees to deliver as hereinafter provided, a print thereof to the Exhibitor.

(b) The public exhibition of any of said motion pictures for three (3) consecutive days at prices usually charged for admission to the theatre where so exhibited in the territory wherein is located the exchange from which the Exhibitor is served, excepting any "road show," "tryout," "preview," or "pre-release" exhibitions thereof, shall be deemed the general release for public exhibition of such motion picture, but only in such territory. A "pre-release" exhibition shall be deemed any exhibition because of seasonal conditions making desirable exhibitions in advance of general release as herein defined.

(c) The Exhibitor agrees to exhibit each of said motion pictures in the order of its general release by the Distributor in the exchange territory in which said theatre is located. The Exhibitor shall have the right to select any of the motion pictures, excepting the last deliverable hereunder, for exhibition out of the order of its general release, subject to prior runs and/or

clearance granted other exhibitors, on the date or dates determined as provided in Article Sixth hereof or otherwise agreed upon, but only upon the following conditions (a) that the Exhibitor is not in default hereunder and shall have fully complied with all the provisions, if any, set forth in the Schedule for the exhibition of one or more of said motion pictures at specified intervals; and (b) that the Distributor and the Exhibitor shall then agree upon the date or dates upon which all of the motion pictures generally released prior to the general release of such motion picture and available for exhibition hereunder shall be exhibited by the Exhibitor, which date or dates shall be within thirty (30) days from the first exhibition date of the motion picture to be exhibited out of the order of its general release; or in the alternative the Exhibitor shall then pay to the Distributor the license fee for each of such motion pictures then generally released and available for exhibition hereunder, and as to any thereof which shall not be exhibited by the Exhibitor within thirty days from the first exhibition date of the motion picture to be exhibited out of the order of its general release, the grant of the run and clearance period in respect thereof shall be deemed waived by the Exhibitor. Upon the failure or refusal of the Exhibitor to exhibit any of such motion pictures then generally released and available for exhibition hereunder within said thirty-day period or to pay the license fee thereof, the right of the Exhibitor to thereafter select for exhibition any motion picture out of the order

of its general release shall be forfeited. The provisions of this paragraph (c) shall not be deemed to limit or qualify the provisions of Article Sixth hereof excepting as in this paragraph (c) specifically provided.

(d) The Distributor shall make deliveries hereunder to the Exhibitor or to the Exhibitor's authorized agent, by delivery at the Distributor's exchange, or to a common carrier, or to the United States Postal authorities. If deliveries are made to a carrier or to a post office, they shall be made in time for prints to reach the place where the said theatre is located in time for inspection and a projection thereof before the usual time for opening said theatre.

(e) Exhibitor agrees to return immediately after the last exhibition on the last date of exhibition licensed, each print received hereunder with its reels and containers, to the exchange of the Distributor from which the Exhibitor is served or as otherwise directed by the Distributor in the same condition as when received, reasonable wear and tear due to proper use excepted. Exhibitor agrees to pay all costs of transportation of such prints, reels, and containers, from the Distributor's exchange or the last previous exhibitor having possession of the same, and return to the Distributor's exchange; or if directed by the Distributor, to ship such positive prints elsewhere than to the Distributor's exchange, transportation charges collect. It is agreed that the delivery of a positive print properly directed and packed in the container furnished by the Distributor therefor, to a carrier designated or used

by the Distributor and proper receipt therefor obtained by the Exhibitor, shall constitute the return of such positive print by the Exhibitor.

(f) If Exhibitor fails to or delays the return of any positive print to the Distributor or fails to forward or delays forwarding (as directed by the Distributor) any such print to any other exhibitor, the Exhibitor agrees to pay the Distributor the damage, if any, so caused the Distributor and in addition the damage, if any, so caused such other exhibitor.

LOSS AND DAMAGE TO PRINTS

FIFTH: The Exhibitor shall pay to the Distributor a sum equal to the cost of replacement at the Distributor's exchange for each linear foot of any print, lost, stolen or destroyed or injured in any way in the interval between the delivery to and the return thereof by the Exhibitor in full settlement of all claims for such loss, theft, destruction or injury. Such payment, however, shall not transfer title to or any interest in any such positive print to the Exhibitor or any other party, nor release the Exhibitor from any liability arising out of any breach of this agreement. The Distributor shall at the option of the Exhibitor repay or credit to the Exhibitor any sums paid by the Exhibitor for any lost or stolen print, upon the return of such lost or stolen print to the Distributor within sixty (60) days after the date when the same should have been returned hereunder. The Exhibitor shall not be liable for the damage or destruction of any print, provided the Exhibitor establishes such damage or destruction

occurred while in transit from the Exhibitor and delivery thereof was made as hereinabove provided. The Exhibitor shall immediately notify the Distributor's exchange by telegram of the loss, theft or destruction of or damage or injury to any print. If any print shall be received from the Exhibitor by the Distributor or any subsequent exhibitor in a damaged or partially destroyed condition it shall be deemed to have been so damaged or destroyed by the Exhibitor unless the latter, immediately after the first public exhibition thereof shall have telegraphed the Distributor's exchange that such print was received by the Exhibitor in a damaged or partially destroyed condition, and setting forth fully the nature of such damage and the amount of footage so damaged or destroyed.

SELECTION OF PLAYDATES

SIXTH: Unless otherwise agreed upon or unless definitely specified or otherwise provided for in the Schedule, the exhibition date or dates of each of said motion pictures shall be determined as follows:

1. Subject to prior runs and/or clearance granted or hereafter granted by the Distributor to other exhibitors and within a reasonable time after a print or prints of any of said motion pictures are received at the exchange of the Distributor out of which the Exhibitor is served, and provided the Exhibitor is not in default hereunder, the Distributor shall mail to the Exhibitor a notice in writing of the date when each such motion picture will be available for exhibition by

the Exhibitor (which date is hereinafter referred to as the "available date"). Such notice shall be mailed to the Exhibitor at least fifteen (15) days before the available date therein specified.

2. Within fourteen (14) days after the mailing of such notice, the Exhibitor shall select an exhibition date or dates not theretofore assigned to another exhibitor or other exhibitors, within the period commencing upon the available date and ending thirty (30) days thereafter and give to the Distributor written notice of the date or dates so selected.

3. Upon the failure of the Exhibitor to so select such date or dates the Distributor shall designate such date or dates by mailing written notice thereof to the Exhibitor.

CLEARANCE AND RUN

SEVENTH: The Distributor agrees not to exhibit or grant a license to exhibit any of said motion pictures for exhibition in conflict with the "run" or prior to the expiration of the "clearance period" if any in the Schedule specified at any theatre therein named or within the territorial limits therein specified. Such period of clearance as to each of said motion pictures shall be computed from the last date of the exhibition thereof licensed hereunder. If clearance is granted against a named theatre or theatres indicating that it is the intention of the Distributor to grant such clearance against all theatres in the immediate vicinity of the Exhibitor's theatre then unless otherwise provided in the Schedule, such clearance shall include any theatre in such vicinity thereafter erected or opened.

DESCRIPTION OF PICTURES

EIGHTH: The Distributor warrants that none of said motion pictures are reissues of old negatives, or old negatives retitled excepting those specifically specified as such in the Schedule.

ADVERTISING PRIOR TO FIRST RUN

NINTH: (a) If the Exhibitor is granted a subsequent run of the said motion pictures, the Exhibitor shall not advertise any thereof by any means of advertising prior to or during the exhibition of any one of said motion pictures by any other exhibitor having the right to a prior run thereof. Nothing in this Clause shall be deemed to prohibit the Exhibitor from advertising generally all of said motion pictures as a group, but such general advertising shall not refer to any one of said motion pictures during its exhibition by any other exhibitor having the first or immediately prior run thereof, excepting as herein provided.

(b) The Exhibitor shall not advertise by any means of advertising any of said motion pictures which may be roadshown by the Distributor and not excepted and excluded from this license, until after the completion of such roadshowing in the United States, and then only as permitted in paragraph (a) of this Clause.

(c) For a breach of the provisions of this Clause the Distributor shall have in addition to all other rights the right to exclude from this license any motion picture advertised in violation of the provisions hereof by written notice to such effect mailed to the Exhibitor and upon the mailing of

such notice the license of such motion picture shall terminate and revert to the Distributor.

ACCEPTANCE BY DISTRIBUTOR

TENTH: Until accepted in writing by an officer of or any person authorized by the Distributor and notice of acceptance sent to the Exhibitor this instrument shall be deemed only an application for a license under copyright, and may be withdrawn by the Exhibitor any time before such acceptance. Unless such notice of acceptance is sent the Exhibitor by mail or telegraph within fifteen (15) days after the date thereof, if the said theatre of the Exhibitor is located East of the Mississippi River, and within thirty (30) days after the date thereof if located West of said river, said application shall be deemed to have been withdrawn. The deposit by the Distributor of any check or other consideration given by the Exhibitor at the time of application as payment for any purpose or the delivery of a print of any of said motion pictures shall not be deemed an acceptance hereof by the Distributor.

CHANGES IN WRITING

ELEVENTH: This license agreement is complete and all promises, representations, understandings, and agreements in reference thereto have been expressed herein. No change or modification hereof shall be binding upon the Distributor unless in writing signed by an officer of the Distributor, excepting in an emergency and only then, a change or modification may be consented to in writing, but only by the representative of

the Distributor managing the Distributor's exchange out of which the Exhibitor is served, provided such change or modification does not change or modify the run, and/or clearance period, or decrease any rental, or eliminate any motion picture specified in the Schedule.

ASSIGNMENT OF CONTRACT

TWELFTH: In the event the Exhibitor sells said theatre or transfers any interest therein and is not in default hereunder, the Exhibitor shall have the right to assign this license to the Purchaser of the theatre or of such interest without the written consent of the Distributor provided the Exhibitor or such assignee shall deliver to the Distributor, in form acceptable to Distributor, a written assumption of all the obligations of the Exhibitor hereunder duly executed by the assignee. Any such assignment, however, shall not release the Exhibitor from any liability hereunder unless such release from liability is consented to by the Distributor in writing.

Except as herein provided, the Exhibitor shall have no right to assign this agreement. The Exhibitor agrees that Distributor shall have the right to assign this agreement to any person, firm or corporation without the written consent of the Exhibitor.

TAXES

THIRTEENTH: The Exhibitor shall pay to the Distributor upon demand a tax fee or any other charge, now and/or hereafter levied, imposed or based upon the delivery and/or the exhibition of prints of motion pictures and/or upon the sums

payable under this license by the Exhibitor to Distributor and/or the rental of the rights herein granted by Distributor to Exhibitor hereunder and/or any other reason whatsoever. In the event the Exhibitor fails or refuses to pay upon demand such tax fee or charge, then the Distributor shall have the right at its option to C. O. D. delivery of any print of the motion pictures licensed hereunder and include the amount of such tax fee or other charge in said C. O. D.

In the event such tax shall be declared invalid by final judicial decree, the Distributor shall not be liable to the Exhibitor for the return of such taxes, fees or other charges paid by Exhibitor to Distributor if the Distributor shall have paid same over to the governmental agency designated to receive or collect same. If such taxes, fees or other charges shall not have been paid over to such governmental agency and said tax shall be declared invalid by final judicial decree, then the Distributor agrees to return to Exhibitor such sum or sums as Distributor shall have received from Exhibitor but not paid over to such governmental agency.

PREVENTION OF PERFORMANCE

FOURTEENTH: If the Exhibitor shall be prevented from exhibiting or the Distributor from delivering any of the said motion pictures for causes beyond their direct control then this license in respect to each such motion picture shall terminate and revert to the Distributor without liability on the part of either party, provided reasonable

written notice of such termination and the cause thereof is given.

FIRST RUN EXHIBITIONS

FIFTEENTH: (a) If the Exhibitor is granted a first run of the said motion pictures, the Exhibitor shall exhibit each of the feature motion pictures excepting those described in Paragraph (d) of this Clause within the period beginning with the date scheduled and announced by the Distributor for the general release of each feature motion picture in the territory wherein is located the exchange of the Distributor out of which the Exhibitor is served and ending one hundred and twenty (120) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the first exhibition date of any of the said motion pictures shall occur on a date later than ninety (90) days after its scheduled and announced general release date, then the period of clearance of such motion picture shall be reduced so as to expire one hundred and twenty (120) days after said scheduled date of its general release. If the Exhibitor is granted a first run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said period of one hundred and twenty (120) days, the grant of the said first run and the clearance period in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor, with the right to the Exhibitor to

exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

SECOND RUN EXHIBITIONS

(b) If the Exhibitor is granted a second run of the said motion pictures and any other exhibitor having been granted the first run thereof immediately prior to such second run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of one hundred and twenty (120) days specified in Paragraph (a) of this Clause, the Exhibitor shall exhibit each such feature motion picture within the period beginning with the date of the expiration of the said one hundred and twenty (120) days period and ending fourteen (14) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said fourteen (14) days period the grant of such second run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

SUBSEQUENT RUNS EXHIBITIONS

(c) If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and

any other Exhibitor having been granted the second run thereof immediately prior to such subsequent run fails to exhibit any of the feature motion pictures, excepting those described in Paragraph (d) of this Clause within the said period of fourteen (14) days specified in Paragraph (b) of this Clause the Exhibitor shall exhibit each feature motion picture within the period beginning with the date of the expiration of the said fourteen-day period and ending seven (7) days thereafter, notwithstanding any provision of Clause Sixth hereof to the contrary. If the Exhibitor is granted a run subsequent to a second run of the said motion pictures and the Exhibitor fails to exhibit any feature motion picture within said seven (7) day period, the grant of such subsequent run and the clearance period if any in respect thereof shall be deemed waived by the Exhibitor and the license fee as to such feature motion picture shall thereupon forthwith become due and payable to the Distributor with the right to the Exhibitor to exhibit such feature motion picture as hereinafter in Paragraph (e) of this Clause provided.

EXTENDED RUNS

(d) Any of the motion pictures which shall have been exhibited at any theatre in the said territory for more than one show week prior to the run granted the Exhibitor shall be accepted from the provisions of this Clause and of Paragraph (b) of Clause Fourth.

EXHIBITION AFTER REVOCATION OF RUN AND CLEARANCE

(e) Upon the waiver of the grant of the run and/or the clearance period of any feature motion picture as provided in Paragraphs (a), (b), or (c) of this Clause, the Exhibitor upon payment of the sum or sums payable hereunder as provided in this Clause for the license to exhibit such feature motion picture, shall have the right to exhibit the same hereunder upon a date or dates not in conflict with any run and/or clearance period granted or hereafter granted to other exhibitors, upon written request mailed or delivered to the Distributor within sixty (60) days after the last date upon which such feature motion picture should have been exhibited by the Exhibitor as provided in this Clause. Failing to make such request within said period of sixty (60) days the license to exhibit such feature motion picture granted hereunder shall terminate and revert to the Distributor.

REMEDIES

SIXTEENTH: If the Exhibitor shall fail or refuse to pay the rental of any of such motion pictures as provided in this license or to furnish statements of the receipts of said theatre, if any are required hereunder, or to give the Distributor's representative access to the said theatre or its box office and/or the Exhibitor's books and records relative to motion pictures the rentals of which are based upon the said theatre's admission receipts as herein provided, or if the Exhibitor

shall exhibit or permit the exhibition of any of said motion pictures at any time or place other than as herein specified, or if the Exhibitor becomes insolvent or is adjudicated a bankrupt, or executes an assignment for the benefit of his creditors, or if a receiver is appointed for any of the property of the Exhibitor, or if the Exhibitor voluntarily or by operation of law should lose control of the said theatre or of his said interests therein, making it impossible for the Exhibitor to exhibit the said motion pictures at the said theatre, then upon the happening of any one or more of said events, the Distributor may at its option, (1) terminate this license agreement, or (2) suspend the delivery of additional motion pictures hereunder until such default or defaults should cease and be remedied. It is agreed that the exercise of any of said remedies by the Distributor shall be in addition to and without prejudice to any right or remedy of the Distributor against the Exhibitor at law or in equity and/or otherwise provided for in this license agreement.

CUTTING OR ALTERATION OF PRINTS

SEVENTEENTH: The Exhibitor shall exhibit each print in its entirety and shall not copy, duplicate, subrent or part with possession of any print. The Exhibitor shall not cut or alter any print, excepting to make necessary repairs thereto, or when required by any duly constituted public official or authority or with the written or telegraphic consent of the Distributor.

ROADSHOWS

EIGHTEENTH: (a) The Distributor shall have the right to exhibit and/or cause to be exhibited as a "roadshow," at any time prior to the exhibition thereof hereunder, such of the motion pictures licensed hereunder as the Distributor may from time to time select and determine, provided, however, that such roadshow exhibitions shall be at theatres at which admission prices for evening performances, during such exhibitions thereof, of not less than one dollar shall be charged for the majority of the orchestra seats, and further provided that, except in the cities of New York and Los Angeles, not more than two of such motion pictures shall be so roadshown.

(b) If and when any such roadshow exhibition shall be in the City of New York and/or the City of Los Angeles, and if the Exhibitor's theatre is situated in the territory then served by the Distributor's exchange or exchanges located in New York or in Los Angeles, as the case may be, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown in each or both of said territories, upon sending to the Exhibitor written notice to such effect not later than four (4) weeks after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory. The exception and exclusion of any

such motion picture in the territory then served by the Distributor's exchange or exchanges located in the City of Los Angeles, or in the City of New York, as the case may be, shall not be deemed to require the Distributor to except and exclude the same motion picture in both of said territories.

(c) If and when any such roadshow exhibition, excepting those in the City of New York and/or in the City of Los Angeles, shall be in the territory served by the Distributor's exchange or exchanges serving the Exhibitor's theatre, the Distributor shall have the right to except and exclude from this license not to exceed two of such motion pictures so roadshown upon sending to the Exhibitor written notice to such effect within seven (7) days after the commencement of such roadshow exhibition and provided that the Distributor shall by like notice except and exclude each such motion picture from all other license agreements containing this Clause and licensing the exhibition of such motion picture in such territory.

(d) The inadvertent omission to send to any of such exhibitors the notice provided for in Paragraphs (a) and (b) of this Clause shall not be deemed to affect the exception and exclusion from this license of any such motion picture.

(e) The Distributor may so exercise such right to except and exclude any such motion picture from time to time, in the respective territories, as above defined, in the United States. Any motion picture so roadshown in any place in the United States, and not excepted and excluded from this license as aforesaid, shall not be deemed

available for exhibition hereunder until after the completion of such roadshowing of such motion picture in the United States, and such motion picture shall be exhibited hereunder when generally released by the Distributor and as and when available for exhibition by the Exhibitor, and the term of this license agreement specified in Clause Second shall be in respect to each such motion picture, extended to and including the date or dates of exhibition by the Exhibitor hereunder of each thereof.

(f) For each motion picture that the Distributor shall except and exclude, as aforesaid, the Exhibitor is hereby granted the option to except and exclude from this license one of the other motion pictures licensed hereunder, but only if the Exhibitor shall give to the Distributor written notice to such effect not later than fourteen days before the date fixed for the exhibition hereunder of such other motion picture. The Distributor may exhibit and/or license the exhibition of any and all motion pictures excepted and excluded from this license by the Distributor and/or the Exhibitor, as aforesaid, when and where desired by the Distributor, free from all claims of the Exhibitor in respect thereof and the license of each thereof shall forthwith upon exclusion hereinbefore provided terminate and revert to the Distributor.

MIDNIGHT SHOWS

NINETEENTH: The license herein granted for the number of days specified in the Schedule shall not include the right of exhibition at any time previous to dawn of the first licensed and booked

date of exhibition without securing express written permission hereunder.

ADMISSION PRICES

TWENTIETH: The Exhibitor during the whole of the licensed exhibition period of each of the motion pictures exhibited hereunder agrees to and shall charge for admission to said theatre the prices listed in the Schedule.

If during any such period less than said admission prices listed in the Schedule is charged, the Distributor in addition to all other rights hereunder shall have the right (a) to immediately terminate the license of the motion picture then being exhibited, by written notice to such effect to the Exhibitor and upon the giving of such notice, the license of such motion picture shall forthwith terminate and revert to the Distributor; or (b) provided the Exhibitor is granted herein a period of "Clearance to reduce such period by not to exceed one-half in respect to each of the motion pictures thereafter deliverable hereunder; or (c) provided no period of "clearance" is specified in the Schedule to withhold for a period not to exceed sixty (60) days notice of the date when each motion picture thereafter deliverable hereunder will be available for exhibition by the Exhibitor; and as to each such motion picture the "run" thereof, if any, granted the Exhibitor, shall be deemed revoked and the Exhibitor agrees to exhibit each such motion picture after notice of the available date thereof upon the date or dates determined as provided in Clause Sixth hereof.

BREACH OF OTHER AGREEMENTS

TWENTY-FIRST: If the Exhibitor shall breach any other agreement between the Exhibitor and Distributor made prior to, simultaneously with or subsequent to the making of this agreement, then any such breach under such agreement shall be deemed to be a breach and a default under this agreement and in any such case the Distributor shall have all the rights and remedies herein provided as well as those at Law, in Equity or otherwise, to the same full force and to the same extent as if such breach had been committed hereunder.

RIGHT TO C. O. D.

TWENTY-SECOND: It is agreed that the Distributor may at its option deliver to the Exhibitor C. O. D. any motion picture deliverable hereunder and may add to said C. O. D. the amount of any past indebtedness owing under this or any other agreement by the Exhibitor to the Distributor. Such indebtedness may include monies due from the Exhibitor to the Distributor for unplayed pictures, played pictures or for any other indebtedness whatsoever.

MONEYS IN TRUST

TWENTY-THIRD: Where this agreement calls for the payment of a fixed and definite rental for any motion picture (that is to say, not based upon a percentage of the gross receipts) then in case payment is not made in advance of the exhibition of any such motion picture and credit is extended to the Exhibitor, in consideration therefor, the

Exhibitor agrees that the Distributor shall receive its rental for any such motion picture with respect to which credit has been so extended, out of the first admission receipts from the patrons paying admissions during the exhibition of any such motion picture up to the amount due the Distributor and such admission receipts shall belong to and be the property of the Distributor when they are paid by the patrons and shall be held in trust for the Distributor until paid to the Distributor and the ownership of said trust fund by the Distributor shall not be questioned whether the moneys are physically segregated or not and the Exhibitor agrees to keep such portion of the gross receipts as are payable to the Distributor hereunder, in a separate and distinct fund. In the event the admission fees received during the exhibition of said motion picture are not equal to the amount of the license fee and/or rental due to the Distributor on account of such motion picture, the Exhibitor shall nevertheless remain and continue to be liable for the balance of the amount due and payable to the Distributor after the moneys kept in trust for the Distributor shall have been paid to the Distributor.

In the event any motion picture herein embraced is based upon a percentage of the Exhibitor's gross receipts derived from the exhibition of such motion picture the Distributor's share of the gross receipts due to the Distributor hereunder shall belong to the Distributor and shall be held in trust for the Distributor until paid to the Distributor; and the ownership of said trust fund by the Distributor shall not be ques-

tioned whether the moneys are physically segregated or not, and the Exhibitor agrees to keep such portion of the gross receipts as are payable to the Distributor hereunder, segregated and in a distinct fund.

ADVERTISING AND ACCESSORIES

TWENTY-FOURTH: The Exhibitor agrees to advertise and announce each motion picture herein embraced as designated in the main title including the designation of the motion picture as a Columbia Pictures Corporation production. The Exhibitor further agrees that in all newspaper advertising and publicity issued by the Exhibitor relating to any said motion picture, the Exhibitor shall adhere to the date of announcement contained in the advertising matter issued by the Distributor.

All advertising accessories used by the Exhibitor in connection with the exhibition of the motion pictures herein embraced, shall be leased from or through the Distributor and same must not be sold, leased or given away by the Exhibitor, but shall be returned promptly to the Distributor after use by the Exhibitor in connection with the exhibition of the particular motion picture.

It is further agreed that the use of the accessories by Exhibitor hereunder is under a license under the respective copyrights relating to such accessories and such accessories shall not be used in any other theatre than the one designated in the Schedule unless otherwise specifically agreed upon in said Schedule.

TWENTY-FIFTH: The following Schedule and all of the written and printed parts thereof are a part of this license:

Schedule for 1936-37 Season

	Theatre	Town and State	Minimum admission price				Seating capacity
			Matinee		Evening		
			Adults	Children	Adults	Children	

GROUP W-4-5-6

(A) There are licensed for exhibition hereunder all of the sound photoplays of feature length (exclusive of the so-called Western group of photoplays hereinafter referred to and exclusive of any and all Frank Capra productions) or such or so many of them as may be specified hereunder under the heading "Special Feature Attractions," embraced in the Distributor's group of pictures to be known as "W-4" not less than thirty (30) and not more than forty (40), which shall be generally released by the Distributor for distribution to motion picture theatres in the United States during the period commencing September 1, 1936, and ending September 30, 1937, and embraced in said group "W-4" (except such photoplays as Distributor is required by contract to obtain the consent or approval of the producer or director thereof or other party to the terms and conditions of licensing the exhibition thereof) and identified by designation numbers running from 7001 to 7040. The "road-showing," "preview" and/or "pre-releasing" of any photo-

play during the said period above mentioned shall not be deemed a general release of said photoplay.

(B) There are licensed for exhibition hereunder all of the sound photoplays of the so-called Western group of photoplays or such or so many of them as may be specified hereunder under the heading "Western Feature Attractions", embraced in the Distributor's group of pictures to be known as "W-5" not less than eight (8) and not more than sixteen (16), which shall be generally released by the Distributor for distribution to motion picture theatres in the United States, during the period commencing September 1, 1936, and ending September 30, 1937, and embraced in said group known as "W-5" and identified by designation numbers running from 7201 to 7216.

(C) There are licensed for exhibition hereunder all of the sound one-reel and two-reel motion pictures known as Short Subjects or such or so many of them as may be specified hereunder under the heading "Columbia's Single and Two Reel Attractions" and/or "Court of Human Relations", embraced in the Distributor's group of pictures to be known as "W-6," not less than fifty-two (52) and not more than one hundred and four (104) one-reel and not less than thirteen (13) and not more than twenty-six (26) two-reel which shall be generally released by the Distributor for distribution to motion picture theatres in the United States, during the period commencing September 1, 1936, and ending September 30, 1937, and embraced in said group known as "W-6."

For the license to exhibit each of said photo-plays and shorts the Exhibitor shall pay to the Distributor the following:

No. Pict. Bought	Consec. No. Days Run	Inc. Sat. Sun.	License Fee or Minimum Guaranteed Rental per Picture	Score Fee Per Day	Special Terms
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A —SPECIAL FEATURE ATTRACTIONS—GROUP W-4

B —WESTERN FEATURE ATTRACTIONS—GROUP W-3

C—COLUMBIA'S SINGLE AND TWO-REEL ATTRACTIONS—Group W-4

	Series	No. Cons. days	No. bought	License fee per subject	Total for series
7500	Color Rhapsodies				
7700	Krazy Kat				
7750	Scrappy				
7800	News World of Sports				
7850	New Screen Snapshots				
7900	Columbia Tours				
7950	Columbia Featurettes				
7300	Stooge 2-reel Comedies				
7350	Andy Clyde 3-reel Comedies				
7400	All Star 3-reel Comedies				

C —COURT OF HUMAN RELATIONS—Group W-4

	Number Cons. Days	Number Bought	License Fee Per Subject	Total for Series
7000		12		

Playing Arrangement: The Exhibitor agrees to play and/or pay for at least _____ Court of Human Relations subjects every _____ commencing the _____ day of _____, 193____, if and as available and in order of availability

until all motion pictures licensed hereunder are exhibited and/or paid for.

Designation.—It is agreed that the license fees herein specified apply to each respective photoplay and to each respective short subject, licensed hereunder according to the classification thereof by the Distributor, and such license fees are not average license fees regardless of the number of such photoplays or short subjects that may be released by the Distributor, embraced in Group W—4-5-6, within the period hereinabove specified. The Distributor agrees to classify each such photoplay and/or short subject at or before the time of the giving to the Exhibitor of the notice of availability of such photoplay or short subject. Nothing in this paragraph contained shall be deemed to prevent the Distributor from exercising its right of re-application contained in the next paragraph hereof.

Re-Application.—The Distributor shall have the right to apply the rental terms (including the license fee or minimum guaranteed rental, percentage of gross receipts, minimum playing time and other rental terms specified in the Schedule) of any motion picture to any other motion picture listed in the Schedule, provided, however, that the Distributor shall at no time increase the total number of motion pictures to which the same rental terms apply beyond the total of such motion pictures specified in the Schedule.

In case the Distributor desires to change the rental terms of any motion picture as above provided, the Distributor shall notify the Exhibitor of the motion picture affected and the terms to be applied to such motion picture, in the notice of

availability sent to the Exhibitor relating to such motion picture or prior thereto.

Playing Arrangement: The Exhibitor agrees to play and/or pay for at least _____ special feature attractions (Group W-4) every _____ and at least _____ western feature attractions (Group W-5) every _____ and at least _____ single reel short subjects (exclusive of Court of Human Relations subjects) every _____ and at least _____ two reel short subjects every _____, commencing the _____ day of _____, 19____, if and as available and in order of availability until all motion pictures licensed hereunder are exhibited and/or paid for.

"The Exhibitor agrees to pay for all the short subjects licensed herein, including the Court of Human Relations subjects, the sum of \$_____ to be paid on a weekly basis of \$_____ per week, for a period of _____ consecutive weeks, starting _____ The weekly sum herein specified to be paid by the Exhibitor shall be so paid irrespective of the number of short subjects which the Exhibitor may play hereunder during any week from among those licensed hereunder."

It is agreed that wherever motion pictures hereunder are to be exhibited on a percentage arrangement, said percentage or percentages have been fixed by the Distributor in reliance upon the agreement and representation by the Exhibitor that the policy of the theatre will be a _____ policy. In the event said policy is changed by Exhibitor then the percentage or percentages designated in the Schedule shall be increased by 25% of the original percentage terms unless the Schedule expressly otherwise provides.

Run—Clearance and Additional Provisions

Run: If the Exhibitor is granted hereunder a second or subsequent "run," the Distributor shall have the right in its sole discretion to grant the Exhibitor in respect to any of the motion pictures herein embraced, a "run" prior to such second or subsequent "run" by giving notice in writing to such effect to the Exhibitor and the Exhibitor agrees to exhibit any such motion picture in accordance therewith.

[End of Schedule]

IN WITNESS WHEREOF, _____ the Exhibitor operating the _____ Theatre, located at No. _____ Street _____ City _____ State _____ has on _____ executed this application, which upon written acceptance by the Distributor when countersigned and approved in the space to the left provided below shall be deemed to be the license to the Exhibitor for the exhibition of the motion pictures specified in the Schedule at said theatre in accordance with the terms hereof.

COLUMBIA PICTURES CORPORATION

L. S.

(Salesman)

(Manager)

(Exhibitor)

Countersigned and approved: Date _____ 193__

COLUMBIA PICTURES CORPORATION

By _____

(General Sales Manager)

By _____

(Partner. General Manager. Officer. Individual (Strike out three))

Direction to Salesman: While you have every right to trade among prospective customers to obtain the best offer possible for your product, after you have selected a particular exhibitor whose offer you believe to be the best obtainable and take a written application from such exhibitor, you are hereby directed to forward the application to the office of your company and make no further effort to sell the same service to any other exhibitor directly competing with such exhibitor until the application so forwarded has been duly rejected, or accepted or withdrawn in accordance with its terms. A violation of this direction will subject you to discharge.

NOTE: This is "Standard form" referred to in par. (h) of Master agreement printed as Appendix A. Only the front of this form is printed at R. 2147-8. In printing the full agreement above paragraphs "first" through "twenty-fourth," which appear on the back of the form, have been placed ahead of section "twenty-fifth," which appears on the face of the form.

APPENDIX C

TABLES OF MASTER AGREEMENTS MADE BETWEEN DEFENDANTS AND MAJOR DISTRIBUTORS COVER- ING FILMS RELEASED DURING FIVE YEARS PRE- CEDING FILING OF COMPLAINT

1. Franchises

(Master agreements covering more than one year)

Name of distributor	Approved date	Seasons covered	Number of towns covered	Special provisions
Low.....	5-2-30 ¹	1930-31 1931-32 1932-33 1933-34 1934-35	36	Net profits to be split (Par. 6, R. 2395). Exhibitor may add newly acquired towns (Par. 13, R. 2395).
Paramount.	9-15-34 ²	1934-35 1935-36 1936-37	44	May play out of order of release (Par. 6, R. 2397). May exhibit in newly acquired theatres (Par. 12, R. 2396). Exhibitor released from obligation in towns where it permanently closed theatres (Par. 6, R. 2397-98). Exhibitor may have a second run upon request without additional charge in not exceeding twenty towns (Par. 12 (b), R. 2399).
RKO.....	2-19-35 ³	1935-36 1936-37 1937-38	41	May play out of order of release (Par. 6, R. 2430). No minimum admission prices required. May exhibit product in newly acquired theatres to be opened (Par. 11, R. 2432). Exhibitor released from obligations where it permanently closes theatre (Par. 7, R. 2431).
Columbia...	9-9-37 ⁴	1937-38 1938-39 1939-40	76	No minimum admission price required. May play out of order of release (Par. (d), R. 2169).

¹ Ex. L-1 (R. 2395-96) is basic agreement, amended on October 20, 1932 (R. 2362) April 20, 1933 (R. 2363-41) and September 12, 1934 (Ex. L-2, R. 2343-45). On September 12, 1934, a separate agreement (Ex. L-3, R. 2347-9) was made to cover ten additional towns not covered by the franchise. These exhibits were offered and received at R. 272-76.

² Ex. F-1 (R. 2396-2317) is basic agreement, amended on September 22, 1936 (R. 2315-21). Ex. F-2 (R. 2397-27) is preliminary agreement for franchise submitted by defendants, dated July 17, 1934. It provides that "the exhibitor is not to be required to play photoplays in order of release" without any qualification (R. 2325). The formal agreement signed by the distributor (Ex. F-1) added the proviso that "the Exhibitor shall not exhibit photoplays out of the order of general release if in so doing it shall interfere with or delay the exhibition of photoplays to be exhibited by other exhibitors" licensed by the distributor (R. 2307). These exhibits were offered and received at R. 208-10, 237.

³ Ex. RKO-44 (R. 2423-44) is agreement, offered and received at R. 353-354.

⁴ Ex. C-6 (R. 2159-2163) is basic agreement with amendments dated September 14, 1937 (R. 2165-6), October 4, 1937 (R. 2164), October 10, 1938 (R. 2169-94) and August 21, 1939 (R. 2167), offered and received at R. 393, 395.

2. All master agreements by seasons¹

Distributor	Exhibit No.	Approved date	Number of towns covered	Special privileges
1934-35				
Columbia.....	C-3 (R. 2119-35)	8-30-34	67	May play out of order of release (Par. (c) R. 2123). No minimum admission price required.
Fox.....	F-2 (R. 2201-35)	9-7-34	60	May play out of order of release (R. 2205). No minimum admission price required.
Loew.....	(See franchise L-1 tabulated above.)			
Paramount.....	(See franchise P-1 tabulated above.)			
RKO.....	(Out of circuit this season.)			
Universal.....	U-1 (R. 2485-34)	9-10-34	42	May play out of order of release (R. 2489). No commitment in any individual situation (R. 2492).
United Artists.....	(No master agreement but some films played.)			
Warner.....	W-4 (R. 2613-34)	9-4-34	41	Net profits to be split (Par. 2 (b), R. 2625). Blanket weekly guarantee payment for all runs throughout circuit (Par. 2 (b) R. 2622).
1934-36				
Columbia.....	C-4 (R. 2125-35)	9-19-35	54	May play out of order of release (Par. (d), R. 2128). No minimum admission price required.
Fox.....	F-3 (R. 2205-10)	9-23-35	51	May play out of order of release (R. 2207). No minimum admission price required. No additional charge for subsequent runs in 11 specified towns (R. 2207).
Loew.....	L-4 (R. 2205-35)	9-27-35	51	May play out of order of release (R. 2205).
Paramount.....	(See franchise P-1 and P-2 tabulated above.)			
RKO.....	(See franchise RKO-44 tabulated above.)			
Universal.....	(Out of circuit this season.)			
United Artists.....	(No master agreement but some films played.)			
Warner.....	W-6 (R. 2623-35)	9-15-35	54	Blanket weekly payment for all runs throughout circuit (R. 2626).
1935-37				
Columbia.....	C-5 (R. 2143-37)	9-31-36	71	May play out of order of release (Par. (d), R. 2145). No minimum admission price required.
Fox.....	F-4 (R. 2213-18)	9-19-36	65	May play out of order of release (R. 2214). No minimum admission price required. No additional charge for subsequent runs in 11 specified towns (R. 2213).
Loew.....	L-5 (R. 2205-36)	9-23-36	63	May play out of order of release (R. 2207). No additional charge for second runs in 11 specified towns (R. 2207).
Paramount.....	(See franchise Ex. P-1, P-2, tabulated above.)			
RKO.....	(See franchise Ex. RKO-44, tabulated above.)			
United Artists.....	(No master agreement but some pictures sold.)			
Universal.....	U-2, U-3 (R. 2675-37)	9-25-36	66	May play out of order of release (R. 2677). No minimum admission price required.
Warner.....	W-7 (R. 2626-41)	9-1-36	72	Blanket weekly payment for all runs throughout circuit (Par. 2 (a), R. 2626).
1937-38				
Columbia.....	(See franchise C-5 tabulated above.)			
Fox.....	F-7 (R. 2219-38)	9-23-37	73	May play out of order of release (R. 2221). No minimum admission price required. No additional charge for subsequent runs in 12 specified towns (R. 2221).

See footnotes at end of table.

2. All master agreements by seasons¹—Continued

Distributor	Exhibit No.	Approved date	Number of towns covered	Special privileges
Loew.....	L-4 (R. 2294-75)	9-25-37	68	May play out of order of release (R. 2295). ¹ No additional charge for second runs in 13 specified towns (R. 2295).
Paramount.....	P-4 (R. 2320-2325)	9-24-37	74	No admission price fixed. No additional charge for second runs in 13 specified towns (R. 2325).
RKO.....	(See franchise RKO-44 tabulated above.)		(7)	May play out of order of release (R. 2445). No minimum admission price required. Blanket annual guarantee for all runs in towns covered (R. 2457). "No commitment as to the amount of product to be played in individual towns" (R. 2458).
1937-38				
Universal.....	U-4 (R. 2452-95)	10-14-37	70	May play out of order of release (R. 2455). ¹ No minimum admission price required.
United Artists.....	UA-48, 70, 71 (R. 2459-65). ²	9-30-37	66	Blanket rental for each of eleven films is fixed for all runs in all towns covered. No minimum admission price required.
Warner.....	W-3 (R. 2542-49)	9-9-37	76	Blanket weekly payment for all runs throughout circuit (Par. 3 (a), R. 2542).
1938-39				
Agreements with Griffith Amendment and Consolidated				
Columbia.....	(See franchise C-6, tabulated above.)			
Fox.....	F-8 (R. 2228-29)	8-5-38	42	May play out of order of release. No minimum admission price required (R. 2228). ¹
Loew.....	L-8 (R. 2295-97)	10-15-38	43	May play out of order of release (R. 2296-7). No additional charge for 2nd runs in 13 specified towns (R. 2296).
Paramount.....	P-3 (R. 2324-67)	10-18-38	44	May play out of order of release (R. 2325). ² No minimum admission price required. No additional charge for second runs in 13 specified towns (R. 2329).
RKO.....	(Out of this half of circuit.)			
Universal.....	U-5 (R. 2601-4)	9-1-38	47	May play out of order of release (R. 2603). ³
United Artists.....	UA-18, 19, 20, 21, 26 (R. 469-69). ⁴	12-30-38	38	Blanket rental for each film is fixed for all runs covered. No minimum admission price required.
Warner.....	W-11.....	8-22-38	44	Blanket weekly payment for all runs used throughout Circuit (Par. 2 (a), R. 2660).
Agreements with R. E. Griffith Theaters and Walter				

See footnotes at end of table.

2. All master agreements by season—Continued

Distributor	Exhibit No.	Ag- reement date	Num- ber of towns cov- ered	Special privileges
Columbia	(See Exhibits C- F-30 (R. 2390- 30).	9-24-35	25	May play out of order of release (R. 2390). No admission price fixed.
Fox	L-7 (R. 2397-98).	9-9-35	25	May play out of order of release (R. 2397).
Loew	F-4, 7 (R. 2398- 30).	9-22-35	31	May play out of order of release (R. 2398, 70).
Paramount	RKO-45 (R. 2461-69).	9-14-35	49	May play out of order of release (R. 2460). No minimum admission price required. Minimum minimum guarantee for all runs in all towns covered (R. 2460). "No commitment as to the amount of picture to be played in individual towns" (R. 2460).
RKO	U-5 (R. 2466- 2500).	9-17-35	31	May play out of order of release (R. 2464). No minimum admission price required.
Universal	1935-39			
United Artists	UA-25, 26, 28, 29, 37 (R. 404- 407). ²	12-30-35	34	Blanket rental for each film to be fixed for all runs covered. No minimum admission price required.
Warner	W-12 (R. 2466- 71).	9-14-35	35	Blanket weekly payment for all runs throughout district (R. 2 (a), R. 2466).

¹ The agreement appearing in this table with each distributor named therein was respectively offered and received as follows: Columbia (R. 2390-30); Fox (R. 2397-98); Loew (R. 2398-30); Paramount (R. 2461-69); RKO (R. 2460-69); Universal (R. 2464-69); United Artists (R. 404-407); Warner (R. 2466-71).

² The sample supplementary agreement for a single town which is made a part of each Fox Master Agreement was stipulated as typical of those made for each town covered by the Master Agreement (R. 2397-98).

³ Provision stipulates that privilege of playing out of order of release "is allowed and agreed upon only as a measure and means of expediting bookings to prevent congestion and is not to be abused" (R. 2398).

⁴ Privilege of playing out of order of release is conditioned on "agreement to completely exhibit or pay in full for each feature and for each one and two reel production not later than thirteen (13) weeks after scheduled release date, and for news and trailers as billed (R. 2398).

⁵ Privilege of playing out of order of release is conditioned on requirement "to play or pay for a minimum of twenty thousand dollars (\$20,000.00) in product each thirteen-week period, beginning November 15, 1935" (R. 2467).

⁶ 21 towns were added for 1937-38, seven by master agreement dated May 14, 1937 (R. RKO-47, R. 2467-52).

⁷ Privilege of playing out of order of release is conditioned on requirement "to play or pay for twelve thousand five hundred dollars (\$12,500.00) worth of product each thirteen-week period, beginning December 15, 1937" (R. 2468).

⁸ Deal is written on three contracts between the same parties covering same terms bearing same date, each contract covering a different producer. Contract for Goldwyn films (R. U. A. 71) Runs not printed.

⁹ Privilege of playing out of order of release is conditioned on requirement "to play or pay for 50% of all product each thirteen-week period" (R. 2398, 2399, 70).

¹⁰ Privilege of playing out of order of release is conditioned on requirement "to play or pay for 50% of all product each thirteen-week period" (R. 2398, 2399, 70).

¹¹ Privilege of playing out of order of release is conditioned on requirement "to play or pay for a minimum of seventeen thousand five hundred dollars (\$17,500.00) in product each thirteen-week period, beginning November 15, 1938" (R. 2468).

¹² Privilege of playing out of order of release is conditioned on requirement "to play or pay for a minimum of seven thousand five hundred (\$7,500) dollars in product each thirteen-week period, beginning December 15, 1938" (R. 2464).

¹³ Deal is written on five contracts between same parties carrying same terms, bearing same date, each contract covering a different producer. None are printed.